No. 97-463-CFX

Title: Textron Lycoming Reciprocating Engine Division, AVCO Corp., Petitioner
v.
United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787

Docketed: September 12, 1997

Court: United States Court of Appeals for the Third Circuit

Entry	Date	Proceedings and Orders
	Sep 12 1997	Petition for writ of certiorari filed. (Response due October 12, 1997)
	Oct 14 1997	Brief of respondent United Automobile, Aerospace Workers, Local 787 in opposition filed.
	Oct 24 1997	Reply brief of petitioner Textron Lycoming Reciprocating Engine Division, AVCO Corp. filed.
	Oct 29 1997	DISTRIBUTED. November 14, 1997
	Nov 14 1997	Petition GRANTED. The petition for a writ of certiorari is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 29, 1997. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 28, 1998. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 18, 1998. Rule 29.2 does not apply. SET FOR ARGUMENT February 23, 1998. **********
	Dec 29 1997	Joint appendix filed.
	Dec 29 1997	Brief of petitioner Textron Lycoming/AVCO Corp. filed.
	Jan 12 1998	LODGING consisting of ten spiral bound copies of NLRB Documents submitted by counsel for the petitioners.
	Jan 12 1998	Record filed.
	Jan 14 1998	CIRCULATED.
	Jan 15 1998	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
	Jan 26 1998	Motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument DENIED.
	Jan 28 1998	Brief of respondents United Autommobile,Aerospace and Agricultural Workers, et al filed.
	Jan 28 1998	Brief amicus curiae of United States filed.
	Feb 9 1998	Record filed.
	Feb 13 1998	Reply brief of petitioner Textron Lycoming Reciprocating Engine Division, AVCO Corp. filed.
	Feb 23 1998	ARGUED.

(1)

Supreme Court, U.S.
FILED

97 • 463 SEP 12 1997

No. 97-___ OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

PETITION FOR A WRIT OF CERTIORARI

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

47 pp

QUESTION PRESENTED

Whether Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, which confers federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization," permits a union to sue in federal court to declare a collective bargaining agreement voidable in the absence of any alleged violation of the agreement?

RULE 29.6 STATEMENT

Petitioner is the AVCO Corporation.* Textron, Inc. is the parent of petitioner AVCO Corporation. All of AVCO Corporation's subsidiaries are wholly owned.

---

* The complaint identifies the defendant as Textron Lycoming Reciprocating Engine Division, AVCO Corporation. This is incorrect. App. 14a. The correct name of the division in question is Textron Lycoming. Moreover, because Textron Lycoming is an unincorporated division of the AVCO Corporation, the actual defendant in this case is the AVCO Corporation. *See, e.g.*, T. Bjur & C. Slezak, *Fletcher Cyclopedia of the Law of Private Corporations* § 4473, at 78 (rev. ed. 1992); 19 C.J.S. *Corporations* § 714, at 367 (1990).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
STATUTE INVOLVED	1
STATEMENT	2
REASONS FOR GRANTING THE WRIT	7
I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE FIRST, FOURTH AND SIXTH CIRCUITS	8
II. RESOLUTION OF THE CONFLICT IS IMPORTANT	12
CONCLUSION	17

TABLE OF AUTHORITIES

Page

CASES

A.T. Massey Coal Co. v. International Union, United Mine Workers, 799 F.2d 142 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987) 9, 16

Adcox v. Teledyne, Inc., 21 F.3d 1381 (6th Cir.), *cert. denied*, 513 U.S. 871 (1994) 9

Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) 12, 13, 15

Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1955) 8

Belknap, Inc. v. Hale, 463 U.S. 491 (1983) 14

Claire Mfg. Co. v. International Ladies Garment Workers' Union, 667 F. Supp. 230 (D. Md. 1987) 16

Corvallis Sand & Gravel Co. v. Hoisting Portable Engrs, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 10

Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) . . . . . *passim*

Garner v. Teamsters Union Local No. 776, 346 U.S. 485 (1953) 14, 15, 16

Hernandez v. National Packing Co., 455 F.2d 1252 (1st Cir. 1972) 8, 16

Heussner v. National Gypsum Co., 887 F.2d 672 (6th Cir. 1989) 8, 9, 16

Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) 6

Holland v. Cline Bros. Mining Co., 877 F. Supp. 308 (S.D. W.Va. 1995) 16

International Bhd. of Elec. Workers, Local 481 v. Sign-Craft, Inc., 864 F.2d 499 (7th Cir. 1988) 12

International Bhd. of Teamsters v. American Delivery Serv., Co., 50 F.3d 770 (9th Cir. 1995) 12, 16

John S. Griffith Constr. Co. v. Southern Cal. Cement Masons Mgmt. Comm., 607 F. Supp. 809

TABLE OF AUTHORITIES (Cont'd.)

Page

(C.D. Cal. 1984) 16

Jones v. Union Carbide Chemicals & Plastics Co., No. 94-1145, 1995 WL 564404 (4th Cir. 1995) 10, 12, 16

Local 435 of the United Automobile Workers Int'l v. General Motors Corp., 552 F. Supp. 395 (D. Del. 1982), *modified*, 720 F.2d 664 (3d Cir. 1983) 16

McNally Pittsburg Inc. v. International Ass'n of Iron Workers, 812 F.2d 615 (10th Cir. 1987) 8, 11, 16

NDK Corp. v. Local 1550 of Commercial Workers Int'l Union, 709 F.2d 491 (7th Cir. 1983) 11, 16

NLRB v. C&C Plywood Corp., 385 U.S. 421 (1966) 14

Roehm v. Horst, 178 U.S. 1 (1900) 7

Rozay's Transfer v. Freight Drivers, Local 208, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) 11, 16

San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959) 2, 14

Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters, 436 U.S. 180 (1978) 14

Smith v. Evening News Ass'n, 371 U.S. 195 (1962) 8

Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962) 16

William E. Arnold Co. v. Carpenters Dist. Council, 417 U.S. 12 (1974) 15

Wisconsin Dep't of Indus. v. Gould, Inc., 475 U.S. 282 (1986) 15

STATUTES AND LEGISLATIVE HISTORY

28 U.S.C. § 1254 1

29 U.S.C. § 18 12

29 U.S.C. § 1291 6

29 U.S.C. § 185 . . . . . *passim*

TABLE OF AUTHORITIES (Cont'd.)

Page

S. Rep. No. 105, 80th Cong., 1st Sess. 30 (1947), *reprinted in Legislative History of the Labor-Management Relation Act, 1947* (1974) 13
93 Cong. Rec. 4390, *reprinted in Legislative History of the Labor Management Relations Act, 1947* (1974) 13

MISCELLANEOUS
2 *Moore's Federal Practice* § 12.40 (3d ed. 1997) 2
19 Corpus Juris Secundum, *Corporations* § 714 (1990) ii
Restatement (Second) of Contracts § 250 (1981) 7
T. Bjur & C. Slezak, *Fletcher Cyclopedia of the Law of Private Corporations* § 4473 (rev. ed. 1992) ii
U.S. Dep't of Labor, Bureau of Labor Statistics, Monthly Labor Review, Jan/Feb 1996 17
Charge, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Nov. 22, 1994) 4
Amended Charge, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Oct. 3, 1995) 4, 15
Brief for the United States as Amicus Curiae, *Local Freight Drivers v. Rozay's Transfer*, No. 88-535 (U.S. Sup. Ct. March 17, 1989) 12

PETITION FOR A WRIT OF CERTIORARI

Textron Lycoming Reciprocating Engine Division, AVCO Corporation[1] ("Textron" or "petitioner") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the Third Circuit (App. 1a) is reported at 117 F.3d 119. The order containing the opinion of the district court (App. 14a) is unreported.

JURISDICTION

The Third Circuit issued its opinion on July 7, 1997. Judgment (App. 19a) was entered on July 29, 1997. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947 provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). Section 301 is reprinted in its entirety at App. 21a.

---

[1] *See supra* p. ii n.* (discussing the correct name of petitioner).

STATEMENT[2]

Congress has enacted a "complex and interrelated federal scheme of law, remedy, and administration" to regulate labor relations in this country and entrusted a "specific and specially constituted tribunal," the National Labor Relations Board (NLRB), with primary authority for implementing and developing this system. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242-243 (1959) (quotation omitted). Recognizing the strong congres-sional desire for uniform application of federal labor law, this Court has held that, wherever conduct arguably constitutes an unfair labor practice, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

While the Board's primary function is to regulate the process of collective bargaining, it has no authority to enforce collective bargaining agreements. *See, e.g., Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-11 (1962). In the area of contract enforcement, Congress carved out a limited exception to the Board's generally exclusive jurisdiction over the collective bargaining process and "ma[d]e collective bargaining agreements enforceable only in the courts." *Id.* at 511. Accordingly, Section 301(a) of the Labor-Management Relations Act of 1947 grants federal courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a).

This case presents an important question: whether Section 301 confers jurisdiction over suits in which no contractual violation is alleged but disputes of a "contractual nature" are present. The decision below — which permits suits under Section 301 even where no contractual violation is alleged — creates a broad area of overlapping jurisdiction, and potential conflict, between the

[2] Because the district court dismissed the complaint for lack of subject matter jurisdiction based upon a facial challenge, the Statement treats the facts alleged in the complaint as true. *See, e.g.*, 2 *Moore's Federal Practice* § 12.30[4], at 12-38 (3d ed. 1997).

federal courts and the NLRB, thereby frustrating important congressional policies.

Background — Petitioner manufactures airplane engines at a plant in Williamsport, Pennsylvania. App. 2a. Respondent, Local 787 of the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), represents approximately 500 employees at that plant. App. 15a.

In 1993, before formal negotiations over a new collective bargaining agreement began, respondent requested any written reports, projections, or other documents concerning petitioner's future subcontracting. App. 3a. When formal negotiations began in January of 1994, the union renewed its request. App. 3a. Although petitioner allegedly did not supply any information concerning subcontracting,[3] the union did not pursue its request or otherwise raise the issue of subcontracting during the negotiations over the collective bargaining agreement. Complaint ¶ 13.

As a result of these negotiations, the parties agreed to continue in force a memorandum agreement concerning subcontracting. J.A. 116. That memorandum recognized petitioner's right to subcontract and required only that petitioner provide seven days notice of any subcontracting:

> If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the production employees of the

[3] A factual dispute exists on this issue. In a submission to the NLRB on November 10, 1995 in connection with charges brought by respondent, *see infra* p. 4, petitioner provided a letter sent to respondent by petitioner in December 1993. In that letter, petitioner disclosed that it was currently considering outsourcing six categories of parts and that in the years ahead "every aspect of the manufacturing process will be examined to determine make or buy decisions." Letter from Frank X. Ratchford to Robert T. McHugh, Dec. 16, 1993, at 2, attached as Ex. A to Letter from Don A. Banta to Joseph Cionzynski, Nov. 10, 1995.

> Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house.

J.A. 100. The new collective bargaining agreement, which incorporated the subcontracting memorandum, became effective on April 1, 1994 and expired on April 4, 1997. Complaint ¶ 3. That agreement included a no-strike clause.[4]

In June 1994, pursuant to the subcontracting agreement, petitioner announced that it was planning to subcontract out production of the parts formerly produced at its Williamsport plant. Complaint ¶ 15. Petitioner also informed the union that approximately half of the employees represented by it would be laid off. *Id.*

The Unfair Labor Practice Charges — In November 1994, the union filed an unfair labor practice charge with the National Labor Relations Board. Charge, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Nov. 22, 1994). In the charge, the union alleged that petitioner had "denied and/or failed to provide within a reasonable time, relevant information which was requested in connection with the subcontracting and/or movement of bargaining unit work." *Id.* On October 3, 1995, the union amended the charge to request a "declaration that the existing collective bargaining agreement is voidable at its option." Amended Charge, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Oct. 3, 1995) (Attachment A).

---

[4] In the no-strike clause, respondent "agree[d] that there shall be no strikes, walkouts, sitdowns, production retardings, or other similar interruptions of, or interferences with, work during the term of this Agreement for any reason." J.A. 62. Petitioner similarly agreed that there would be no lockouts during the term of the collective bargaining agreement. J.A. 62. The expiration of the agreement has not eliminated the dispute between the parties.

The apparent purpose of this amendment was to enable the union to engage in — or, at least, threaten to engage in — a strike barred by the agreement's no-strike clause.

Although the Board agreed to issue a complaint, it refused to void the collective bargaining agreement. Instead, the Board sought an order preventing petitioner from enforcing the subcontracting memorandum and requiring petitioner to bargain in good faith about subcontracting. J.A. 118. The petitioner and the Board have reached a tentative settlement of the complaint, which respondent is currently appealing administratively.

The Proceedings Below — On November 16, 1995, nearly a year after filing unfair labor practice charges with the Board, the union filed a complaint in the United States District Court for the Middle District of Pennsylvania. The complaint bases federal jurisdiction on Section 301 and seeks compensatory damages, punitive damages, as well as a declaration "that the existing collective bargaining agreement between the parties is voidable at the option of the [union]." Complaint ¶ 16. The union also alleges, as it did before the Board, that in the negotiation of the 1994 agreement, it demanded documents concerning the company's plans to move or subcontract out bargaining unit work. *Id.* ¶ 5.

In addition, the complaint asserts that a representative of petitioner stated in January 1994 that he knew of no plans to subcontract out bargaining unit work, promised to ensure that his knowledge was correct, and then never raised the issue again. *Id.* ¶ 9; *see also* App. 3a. According to the complaint, during the negotiations which ended in March 1994, petitioner was formulating a secret plan to subcontract out all bargaining unit work. Complaint ¶ 11. The union contends that, if it had known about this plan, it would have made specific demands relating to subcontracting and would not have agreed to the no-strike clause in the collective bargaining agreement. App. 3a. Indeed, the union conceded before the district court that it was seeking to have the collective bargaining agreement declared voidable in order to be able to threaten to strike credibly. Pl. Surreply at 2.

Significantly, the union does not allege that petitioner violated the collective bargaining agreement.

The district court dismissed the complaint for lack of subject matter jurisdiction. App. 18a. The district court noted that Section 301 grants federal courts jurisdiction only over "[s]uits for *violation* of contracts between an employer and a labor organization." App. 17a (emphasis added). The district court did not, however, find any claim of a "violation of a contract between an employer and labor organization." App. 18a (quotation omitted). To the contrary, the district court found, the union was claiming that petitioner "negotiated in bad faith, a matter within the exclusive jurisdiction of the NLRB." App. 18a.[5]

Respondent appealed pursuant to 28 U.S.C. § 1291, and the Third Circuit reversed. Although it recognized that the First, Fourth and Seventh Circuits had held that jurisdiction under Section 301 is limited to suits alleging violations of a collective bargaining agreement, App. 7a-8a, the Third Circuit nonetheless found jurisdiction under Section 301 despite the absence of any alleged violations. App. 9a-11a. The court, largely ignoring the language of the statute, relied on the supposed purpose of Section 301. According to the Third Circuit, "by enacting § 301(a) Congress intended that courts resolve disputes of a contractual nature, including disputes over [a collective bargaining] agreement's very existence." App. 9a. Since a dispute over whether a contract was secured by fraudulent inducement "goes to the heart of the enforceability of the collective bargaining agreement between the parties," the Court concluded that Section 301 confers jurisdiction over the union's suit. App. 10-12a.

---

[5] Because the district court found no subject matter jurisdiction over the case, it did not reach Textron's alternative argument that the complaint should be dismissed to the extent it alleges conduct subject to the grievance and arbitration procedures in the collective bargaining agreement. App. 4a; *see generally Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562-63 (1976).

The decision below found this conclusion buttressed by the fact that the union could have raised fraudulent inducement as a defense had petitioner sought to enforce the collective bargaining agreement. App. 12a. The Third Circuit did not see any reason to permit the union to raise fraudulent inducement as a defense to an enforcement action while prohibiting it from raising the same point in an anticipatory suit before any violation has occurred.

REASONS FOR GRANTING THE WRIT

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, has been a key feature of federal labor law for half a century. That section provides federal courts with jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a). This case presents an important and recurring question concerning the scope of Section 301 not previously considered by this Court. All of the Section 301 cases previously before this Court have involved allegations of actual violations of a collective bargaining agreement.[6] The courts of appeals are hopelessly divided over whether Section 301 confers jurisdiction over anticipatory suits

---

[6] In one case, this Court held that contract claims covered by the section may be brought in state court and if they could be brought in federal court under Section 301. *See Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962). In that case, the plaintiff union alleged that the company had announced it would not abide by a settlement agreement with the union and sought a declaration that "there existed a valid and binding collective bargaining agreement." 368 U.S. at 504. Thus, even though the union sought declaratory relief in that case, there was nonetheless an alleged violation of contract: a breach by anticipatory repudiation. *See, e.g., Roehm v. Horst*, 178 U.S. 1, 7 (1900) ("[W]here the contract is renounced before performance is due, and the renunciation is absolute and unequivocal, the injured party may treat the breach as complete and bring his action at once."); *see generally* Restatement (Second) of Contracts § 250 (1981).

where no violation has occurred. Because of the importance of this question, the decision below warrants review by this Court.

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE FIRST, FOURTH AND SIXTH CIRCUITS

More than forty years ago, Justice Frankfurter observed that Section 301 has "proved a fertile source of difficulty for the lower courts."[7] As this case demonstrates, Justice Frankfurter's observations remain true today. The interpretation of Section 301 in the decision below squarely conflicts with the interpretation in the decisions of at least three other courts of appeals. The existence of this conflict has been recognized not only by the court below, App. 7a-8a, but also by the Sixth and Tenth Circuits. *See McNally Pittsburg Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 618 (10th Cir. 1987) (noting the "clear disagreement" among the federal courts); *Heussner v. National Gypsum Co.*, 887 F.2d 672, 676 n.2 (6th Cir. 1989) (noting the developing conflict among the circuits).

The decision below squarely conflicts with the decision of the First Circuit in *Hernandez v. National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972). In *Hernandez*, the First Circuit held that Section 301 of the Labor-Management Relations Act does not confer jurisdiction over a suit not alleging any violations of a collective bargaining agreement but instead seeking a declaration that the agreement was invalid. The plaintiffs in *Hernandez* sought to have a collective bargaining agreement declared "null and void" not because of any violation of the argument but rather because the agreement was not ratified or supported by the affected employees. *See* 455 F.2d at 1252. The First Circuit found that Section 301 did not confer jurisdiction over such claims. Section 301, the court observed, applies only to "'[s]uits

---

[7] *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*, 348 U.S. 437, 439 (1955) (op. of Frankfurter, J.), *overruled by, Smith v. Evening News Ass'n*, 371 U.S. 195 (1962).

for *violation* of contracts between an employer and a labor organization.'" 455 F.2d at 1253 (quoting 29 U.S.C. § 185(a)) (emphasis in original).

The Sixth Circuit reached a similar conclusion in *Heussner v. National Gypsum Co.*, 887 F.2d 672 (6th Cir. 1989). In that case, discharged employees sued under Section 301 to rescind a settlement agreement that reduced the employees' severance pay. *See* 887 F.2d at 674. Like the respondent here, the plaintiffs in *Heussner* asserted that the settlement agreement had been procured through fraud and that the employer had breached its duty to "supply relevant information" to the union. *Id.* at 675-76. Relying upon the plain language of the statute, the Sixth Circuit found that under Section 301 courts only "possess subject matter jurisdiction in cases involving an alleged violation of an existing collective bargaining contract." *Id.* at 676. The Sixth Circuit therefore held that federal courts "lack[ ] jurisdiction under Section 301(a) to invalidate" collective bargaining agreements. *Id.* In 1994, the Sixth Circuit reaffirmed this holding. *See Adcox v. Teledyne, Inc.*, 21 F.3d 1381, 1386 (6th Cir.), *cert. denied*, 513 U.S. 871 (1994) (noting that federal courts "lack[ ] jurisdiction to entertain a challenge under § 301 to the validity" of a collective bargaining agreement).

The Fourth Circuit interprets Section 301 similarly. In *A.T. Massey Coal Co. v. United Mine Workers Int'l*, 799 F.2d 142 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987), a corporation signed a collective bargaining agreement with the United Mine Workers. The Fourth Circuit found that a union suit to redress alleged violations of the agreement by the corporation's parent and affiliates fell within Section 301. *See* 799 F.2d at 146. The Fourth Circuit held, however, that a suit by the corporation's parent seeking a declaration that the collective bargaining applied only to the subsidiary was not within Section 301. *See id.* In the Fourth Circuit's view, a plaintiff "must allege breach of an existing collective bargaining contract in order to avail itself of jurisdiction under § 301 of the Act." *Id.* Since the parent corporation sought a declaration that "it was *not* bound by the [agreement]," the Fourth Circuit concluded that the parent

corporation had not "br[ought] itself under the explicit jurisdictional language of the Act." *Id.* (emphasis in original). The Fourth Circuit recently reaffirmed that under Section 301 federal courts "lack[ ] subject matter jurisdiction to decide the validity" of collective bargaining arguments. *Jones v. Union Carbide Chemicals & Plastics Co.*, No. 94-1145, 1995 WL 564404, at *2 (4th Cir. Sept. 25, 1995) (per curiam).

The Supreme Court of Oregon has adopted the same interpretation of Section 301. In *Corvallis Sand & Gravel Co. v. Hoisting Portable Eng'rs*, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967), the plaintiff claimed that the defendant-employer had obtained a collective bargaining agreement by coercion and sought rescission of the agreements. *See* 419 P.2d at 40. Asserting that its suit could have been brought in federal court under Section 301, the plaintiff also contended that its claim could not be preempted by the NLRB's jurisdiction over unfair labor practice claims. *See id.* at 43; *see also Dowd Box*, 368 U.S. at 510-11 (holding that state law claims falling within Section 301 are immune from *Garmon* preemption). The Oregon Supreme Court disagreed. It found Section 301 inapplicable because "[n]o substantive contract right [was] being asserted." *Corvallis*, 419 P.2d at 44. The Court went on to observe that "[t]o apply § 301(a) L.M.R.A. to suits to rescind labor contracts because of unfair labor practices in their procurement would open to regulation by courts almost the entire field of unfair labor practices." *Id.* In the Oregon Supreme Court's view, "if any significance is to be given to the words 'for violation of contracts' a suit such as the present one does not come within its embrace." *Id.*

The decision below cannot be reconciled with these rulings. Like the plaintiffs in *Corvallis*, *Hernandez*, *Heussner*, and *Massey*, respondent did not allege any contractual violations but instead sought a ruling that a collective bargaining agreement was invalid. The Third Circuit's ruling — that any "suit involving a dispute over [a collective bargaining] agreement's existence is subject to § 301(a) jurisdiction" (App. 9a) — squarely conflicts with the decisions of the First, Fourth, and Sixth Circuits and the

Oregon Supreme Court. Moreover, in citing and then rejecting both *Hernandez* and *Heussner*, the decision below expressly acknowledged this conflict. App. 7a.

As the court below also recognized, App. 10a, its decision is consistent with the Ninth Circuit's decision in *Rozay's Transfer v. Freight Drivers, Local 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989). In *Rozay*, an employer alleged that it had been induced into signing an agreement by false representations. *See* 850 F.2d at 1324. The Ninth Circuit found jurisdiction over the claim under Section 301. In direct contrast to the First, Fourth and Sixth Circuits, the Ninth Circuit reasoned:

> Section 301 . . . applies not only to suits for breach of a collective bargaining agreement once it is duly formed, but also to suits impugning the existence and validity of a labor agreement, including those alleging improper conduct or mistake during the formation of the agreement.

Id. at 1326 (citations omitted). The Tenth Circuit has likewise refused to accept any "requirement of an alleged violation under § 301." *McNally Pittsburg*, 812 F.2d at 618 (finding jurisdiction over suit seeking declaration no contract exists).

Although the court below indicated that its decision conflicted with the position of the Seventh Circuit, App. 7a, that Circuit's position is, in fact, unclear. In the case cited in the decision below, *NDK Corp. v. Local 1550 of Commercial Workers Int'l Union*, 709 F.2d 491 (7th Cir. 1983), the Seventh Circuit found that it did not have jurisdiction over a suit seeking to rescind a collective bargaining agreement allegedly procured by fraud. *See* 709 F.2d at 492. Relying upon the statute's plain language, the Seventh Circuit held in *NDK Corp.* that Section 301 "provides jurisdiction for suits for violation of contracts but not for the determination of the validity of contracts where validity is the ultimate issue." *Id.* at 493. Five years later, a panel of the Seventh Circuit purported to overrule *NDK Corp.* and hold that "under § 301(a) any disputes about the meaning or validity of collective bargaining agreements come within the jurisdiction of

the federal courts." *International Bhd. of Elec. Workers, Local 481 v. Sign-Craft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988). The plaintiff in *Sign-Craft* did not, however, seek to invalidate a collective bargaining agreement; instead, the plaintiff claimed that the defendant had breached an agreement by anticipatory repudiation. *See id.* at 500; *see also supra* p.7 n.6. As a consequence, the Seventh Circuit's position remains unclear.

What is clear is that at least six circuits are evenly split over the question presented in this case. In 1988, after being invited by this Court to file a brief as *amicus curiae* in one of those cases, the Solicitor General suggested that this conflict would resolve itself. *See* Brief for the United States as Amicus Curiae, *Freight Drivers, Local 208 v. Rozay's Transfer*, No. 88-535, at 15-16 (U.S. Sup. Ct. March 17, 1989). This prediction has not proven correct. Since the Solicitor General's brief, the Sixth Circuit has issued its opinion in *Heussner*, the Ninth Circuit has reaffirmed its decision in *Rozay's Transfer*, *see International Bhd. of Teamsters v. American Delivery Serv.*, 50 F.3d 770, 773 (9th Cir. 1995), and the Fourth Circuit has expressly rejected an invitation to overturn its decision in *Massey*. *See Jones*, 1995 WL 564404, at *2 ("Appellants' citation to numerous decisions by other circuits . . . cannot change our decision . . . ."). In short, the lower courts are deeply and hopelessly divided over the proper treatment under Section 301 of suits that do *not* allege violations of collective bargaining agreements, and the only way in which this conflict will be resolved is through the intervention of this Court.

II. RESOLUTION OF THE CONFLICT IS IMPORTANT

The decision below, and the conflict it perpetuates, require the attention of this Court. If review is not granted, important federal labor policies will be seriously undermined.

First, in Section 301, Congress conferred jurisdiction on the federal courts over "[s]uits for violation of contracts." 29 U.S.C. § 18(a). As this Court has observed, this provision covers only "disputes that are governed by the terms of the collective

bargaining agreement itself." *Amalgamated Ass'n of Street, Electric Railway, & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300-01 (1971). Plainly, Congress did not intend Section 301 to encompass all claims relating to collective bargaining agreements or even all claims relating to contract law. If Congress had, Section 301 would have conferred jurisdiction over all "suits *concerning* contracts between an employer and a labor organization," not just "[s]uits *for violation of* [such] contracts." 29 U.S.C. § 185(a) (emphasis added). By ignoring the clear statutory language in favor of an interpretation based on the perceived purpose of the statute, the decision below directly frustrates the plain intent of Congress.[8]

Second, in expanding the jurisdiction of the federal courts and correspondingly contracting the exclusive jurisdiction of the Board, the decision below undermines fundamental federal labor policies. Congress "deliberately plac[ed] the responsibility for applying and developing [the labor law's] comprehensive legal system in the hands of an expert administrative body rather than the federalized judicial system." *Lockridge*, 403 U.S. at 288 (footnote omitted). Responding to the perceived inadequacies of common-law courts and state legislatures, Congress enacted a "comprehensive national labor law." *Id.* at 286. It also organized a specialized and independent administrative agency

---

[8] Not surprisingly, the decision below also misinterprets the purpose of Section 301. The Third Circuit assumed that Congress intended Section 301 to have a broad application to cover all "disputes of a contractual nature." App. 9a. The legislative history, however, makes clear that Congress understood Section 301 to "relate[ ] to suits by and against labor organizations for *breach* of collective bargaining agreements," not to all contractual disputes between labor and management. S. Rep. No. 105, 80th Cong., 1st Sess. 30 (1947), *reprinted in Legislative History of the Labor-Management Relations Act, 1947* 430 (1974); *see also Labor-Management Relations Act*, 93 Cong. Rec. 4390 (statement of Sen. Taft) (noting that Section 301 provides "for bringing a lawsuit for *breach* of contract")(emphasis added), *reprinted in Legislative History* 1133.

(the NLRB), "confide[d] primary interpretation and application of" those rules to that agency, and "prescribed a particular procedure" for the resolution of disputes within the agency's jurisdiction. *Garner v. Teamsters Local No. 776*, 346 U.S. 485, 490 (1953). Implicit in this "complex and interrelated federal scheme of law, remedy, and administration" is a congres- sional desire for the "'uniform application of its substantive rules.'" *Garmon*, 359 U.S. at 243 (quoting *Garner*, 346 U.S. at 490). Accordingly, this Court has held that, as a general rule, whenever a claim is even "arguably subject" to the NLRB's jurisdiction, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

Section 301 is a limited exception to this rule, an exception that grants jurisdiction to the federal courts only where a collective bargaining agreement has allegedly been violated. So limited, Section 301 does not disrupt Congress' carefully crafted system. Because violation of a collective bargaining agreement is not in and of itself an unfair labor practice within the Board's jurisdiction, *see NLRB v. C & C Plywood Corp.*, 385 U.S. 421, 426-27 (1966), and because the Board has no authority to award contractual damages or order specific performance, *see Dowd Box*, 368 U.S. at 511, court enforcement of collective bargaining agreements does not create a significant risk of either conflicting standards or conflicting remedies. *Cf. Belknap, Inc. v. Hale*, 463 U.S. 491, 510-11 (1983) (finding no threat of interference with the NLRB where the relief sought in state court cannot be secured before the NLRB); *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 197 & n.26 (1978) (same).

The rule adopted by the decision below, by contrast, encourages just such conflicts. As this case makes clear, the decision below creates a significant risk of conflicting standards of conduct. Before the NLRB, petitioner has contended that it made a core entrepreneurial decision to stop manufacturing parts for Lycoming airplane engines, that such decisions are not mandatory subjects of bargaining, and that petitioner was

therefore under no obligation to respond to respondent's request for information. In order to rule on petitioner's fraud claim, the trial court would have to consider the propriety of the conduct that petitioner contends falls within management's rights under federal labor law, thereby creating the risk that the trial court would find petitioner liable for having engaged in conduct the NLRB considers protected.

The decision below also creates the possibility of conflicting remedies. As this Court has observed, "Conflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy." *Lockridge*, 403 U.S. at 287 ; *see also Garner*, 346 U.S. at 498-99 ("[W]hen two separate remedies are brought to bear on the same activity, a conflict is imminent."). Accordingly, this Court has prohibited state and federal courts "not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRB, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act." *Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 286 (1986). The decision below permits a party dissatisfied with the relief sought by the Board to seek a different and far more drastic remedy in federal court.[9] In short, by relying upon the supposed purpose of Section 301 and expanding that provision beyond the scope of its plain language, the decision below threatens to create both substantive and remedial conflicts and thereby to undermine

---

[9] That appears to be the case here. Although respondent asked the NLRB to seek a "declaration that the existing collective bargaining agreement is voidable at [respondent's] option," Amended Change, *Textron Lycoming Reciprocating Engine Div.*, Case No. 4-CA-23285 (N.L.R.B. Oct. 3, 1995) (Attachment A), the Board refused to do so, no doubt realizing that respondent was attempting to escape no-strike clause in its collective bargaining agreement. *See* Pl. Surreply at 2; J.A. 118. As this Court has observed, one of Congress' purposes in enacting Section 301 was "promoting collective bargaining that ends with agreements not to strike." *William E. Arnold v. Carpenters Dist. Council*, 417 U.S. 12,18 (1974) (quotation omitted).

Congress' carefully constructed system for administering labor policy.

Third, the conflicting court of appeals decisions on the scope of Section 301 create the possibility that national labor agreements will be subject to different procedures and remedies depending upon where Section 301 suits are brought. Congress has, however, placed a high premium on "uniform application of its substantive rules." *Garner*, 346 U.S. at 490. As this Court noted in an analogous context, the mere possibility of conflicting decisions will "inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements" and thereby undermine Congress' goal of ensuring industrial peace and productivity. *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962). For this reason as well, the decision below, and the conflict it perpetuates, undermine federal labor policy.

Since enactment of the Labor-Management Relations Act of 1947, hundreds, if not thousands, of suits in federal court have been brought under Section 301, including more than a dozen in this Court alone. The specific question presented by this petition — whether a party may invoke Section 301 without alleging any contractual violation and seek instead to invalidate a collective bargaining agreement in federal court based upon conduct during the collective bargaining process that could be challenged before the NLRB — has been the subject of numerous reported decisions.[10] If the decision below were allowed to stand, parties

---

[10] *See, e.g.*, *Union Carbide Chemicals & Plastics Co.*, 1995 WL 564404 at *2; *American Delivery Serv., Co.*, 50 F.3d at 773; *Heussner*, 887 F.2d at 675-76; *Rozay's Transfer*, 850 F.2d at 1326; *McNally Pittsburg*, 812 F.2d at 618; *A.T. Massey Coal Co.*, 799 F.2d at 146; *NDK Corp.*, 709 F.2d at 492-493; *Hernandez*, 455 F.2d at 1253; *Holland v. Cline Bros. Mining Co.*, 877 F. Supp. 308, 314 (S.D. W.Va. 1995); *Claire Mfg. Co. v. International Ladies Garment Workers' Union*, 667 F. Supp. 230, 231 (D. Md. 1987); *John S. Griffith Constr. Co. v. Southern Cal. Cement Masons Mgmt. Comm.*, 607 F. Supp. 809, 812 (C.D. Cal. 1984); *Local 435 of the United Automobile Workers Int'l v. General Motors Corp.*, 552 F. Supp. 395, 397-98 (D. Del. 1982), *modified*, 720 F.2d 664 (3d Cir. 1983) (mem. op.).

to the hundreds of collective bargaining agreements negotiated each year[11] could follow respondent's lead and seek relief in federal court that the NLRB has refused to grant. Such a result would threaten the authority of the NLRB and the carefully crafted scheme created by Congress to administer federal labor policy. The decision below warrants this Court's review.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

Timothy B. Dyk
(Counsel of Record)
Andrew M. Kramer
Daniel H. Bromberg
Jones, Day, Reavis & Pogue
1450 G St., N.W.
Washington, DC 20005-2088
(202) 879-3939

Counsel for Petitioner
Textron Lycoming Reciprocating
Engine Division, AVCO Corp.

September 12, 1997

---

[11] *See, e.g.*, U.S. Dep't of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Jan/Feb. 1996, at 12 (noting that more than 600 agreements affecting more than 2.4 million workers were scheduled to expire in 1996).

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
INTERNATIONAL UNION AND ITS LOCAL 787,

Appellant,

v.

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Appellee.

No. 96-7261

July 7, 1997

Before: BECKER, ROTH, Circuit Judges, BARRY, District Judge.*

OPINION OF THE COURT

BECKER, Circuit Judge.

This is an appeal by the United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") and its Local 787 from the district court's order dismissing its complaint against defendant Textron Lycoming Reciprocating Engine Division, Avco Corp. ("Textron"), for lack of subject matter jurisdiction under § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a). The district court found that the UAW's suit, which seeks a declaration that the collective bargaining agreement between the parties is voidable because it was secured by fraud in the inducement, was not a "[s]uit for violation

---

*Honorable Maryanne Trump Barry, United States District Judge for the District of New Jersey, sitting by designation.

of [a] contract[ ] between an employer and a labor organization representing employees" within the meaning of § 301(a).

The UAW's appeal requires us to consider the scope of § 301(a) and our decision in *Mack Trucks, Inc. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 856 F.2d 579 (3d Cir. 1988). In that case, Mack Trucks sought a declaratory judgment that the collective bargaining agreement between it and the UAW was valid and enforceable, after the UAW had threatened to declare that there was no agreement between the parties. We held that § 301(a) conferred subject matter jurisdiction, finding that Mack Trucks' suit was a "suit for violation of [a] contract[ ]." *Id.* at 588.

In urging us to affirm the district court's order in this case, Textron contends that the suit filed by the UAW, here the party seeking to establish jurisdiction, can be distinguished from *Mack Trucks* in two respects. First, Textron points out that, while the very existence of the collective bargaining agreement was at issue in *Mack Trucks*, the UAW here acknowledges the existence of the agreement, and rather seeks a declaration that the collective bargaining agreement between the parties is *voidable* because it was secured by fraud in the inducement. Second, while in *Mack Trucks* the plaintiff wished to *enforce* the collective bargaining agreement, the UAW here seeks the power to *repudiate* the agreement, and Textron contends that § 301(a) does not supply jurisdiction under such circumstances. Because we disagree with Textron and conclude that the UAW's suit is a suit for violation of a contract under § 301(a) and *Mack Trucks*, we reverse.

I.

The complaint pleads the following facts which, since we deal with a motion to dismiss, we must take as true. The UAW represents employees at Textron's Williamsport, Pennsylvania plant, at which the company manufactures and assembles aircraft engines. This dispute arose from the collective bargaining agreement between the parties that covered the period from April 1, 1994 to April 1, 1997 and, more specifically, the negotiations that produced that agreement. Prior to the commencement of negotiations, the UAW submitted to Textron a request for information to aid it in its preparations for the negotiations. One section of the request asked whether Textron planned to subcontract out any of the work that was being done by the UAW members at the plant. The request specifically demanded any written documents that Textron had prepared on the subject of subcontracting. The UAW twice repeated this request. Prior to the negotiations, Textron never disclosed any information about plans to move bargaining unit work.

At the opening of the negotiations, the UAW renewed its request that Textron disclose any plans to contract out the work. Textron's vice-president for human resources, Frank Ratchford, stated that he had no knowledge of any plans for subcontracting, and also promised to make sure that his knowledge was complete. Neither Ratchford nor any other Textron official raised this issue again during negotiations. The parties reached a collective bargaining agreement in March 1994, which was ratified by the UAW membership at the beginning of April 1994.

The UAW's complaint alleges that, during the negotiations, Textron developed a plan to subcontract certain bargaining unit work at the plant, but never disclosed it to the UAW. According to the UAW's submission, the plan was presented to and approved by Textron's Board of Directors after the UAW membership ratified the collective bargaining agreement. The membership learned of the plan in June 1994.

The UAW alleges that about half of the union's members at the plant will lose their jobs as a result of Textron's subcontracting plan. It also represents that it would have used a different bargaining strategy had it known of the company's subcontracting plan. Instead, relying on the company's denial of any such plan, the union made no contract demands relating to the issue and did not pursue its request for information on the subject. More specifically, the union represents that it would not have agreed to the "no-strike" provision in the collective bargaining agreement had it known of the subcontracting plan.

The UAW's complaint in the District Court for the Middle District of Pennsylvania sought a declaratory judgment that the collective bargaining agreement was voidable at the UAW's option because it was secured by fraud in the inducement. The UAW relied on § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), for subject matter jurisdiction. Textron moved to dismiss the complaint on two grounds: (1) § 301(a) failed to confer subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), because the National Labor Relations Board ("NLRB") has exclusive jurisdiction over the UAW's claims of bad faith bargaining; and (2) the UAW failed to state a claim for relief that could be granted, Fed. R. Civ. P. 12(b)(6), because it had failed to exhaust the grievance process available under the collective bargaining agreement.

The district court granted Textron's motion based on the first ground, and, accordingly, did not reach the second question. The court first concluded that the UAW sought neither to enforce its rights under the collective bargaining agreement nor to show that a collective bargaining agreement existed; rather, the UAW had requested only a declaration that Textron had violated its duty to bargain in good faith under § 8 of the National Labor Relations Act ("NLRA") in negotiating the agreement. Having so characterized UAW's suit, the district court found that it lacked jurisdiction under § 301, and that the case was within the exclusive jurisdiction of the NLRB.

Moreover, the court reasoned that, while we held in *Mack Trucks* that a district court has jurisdiction to determine whether a collective bargaining agreement exists, that holding was "based on the principle that a district court may enforce the parties' rights under a CBA, but may not reach a claim which is independent of the contract." The court found that the UAW's claim was independent of the terms of the contract. It concluded finally that, "[i]n no way can UAW's claim be classified as one for 'violation of [a]contract [ ] between an employer and a labor organization' under § 301(a)." Order at 6.

The UAW appeals, contending that the district court erred in concluding that § 301(a), as interpreted by our decision in *Mack Trucks*, does not confer jurisdiction over its suit. Our review of the order dismissing the complaint is plenary. *See Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1044 (3d Cir. 1993).

II.

This case requires us to examine again the relationship between the jurisdiction of the NLRB and that of the federal district courts over labor cases. As we explained in *Mack Trucks*, 856 F.2d at 584-85, under the preemption doctrine of *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959), "[w]hen an activity is arguably subject to § 7 or § 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board."[1] The purpose of the *Garmon* preemption doctrine is both to ensure the uniform development of substantive labor law rules and to entrust the development of those rules to an administrative agency with particular labor law expertise. *See Vaca v. Sipes*, 386 U.S. 171, 178-81 (1967); *Mack Trucks*, 856 F.2d at 584.

This doctrine, however, "has never been rigidly applied to cases where it could not fairly be inferred that Congress intended exclusive jurisdiction to lie with the NLRB." *Vaca*, 386 U.S. at 179. In § 301(a) of the Labor Management Relations Act, Congress "carved out" such an exception to the exclusive jurisdiction of the NLRB over cases arguably subject to § 7 or § 8 of the NLRA. *Id.* This section provides: "Suits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district court of the United States having jurisdiction over the parties." 29 U.S.C. § 185(a). Hence, a federal district court has jurisdiction over

---

[1] Section 7 of the NLRA concerns the right of employees to organize and to engage in collective bargaining, 29 U.S.C. § 157, and § 8 prohibits both employers and unions from committing "unfair labor practices" as defined in the statute, *id.* § 158.

suits "for violation of contracts between an employer and a labor organization representing employees" under § 301(a) even if the claimed harm may arguably constitute an unfair labor practice under the NLRA. Under these circumstances — when the challenged practice both violates the collective bargaining agreement and is arguably subject to the NLRA — the federal district courts and the NLRB are said to share "concurrent jurisdiction" over the suit. *Mack Trucks*, 856 F.2d at 585. In other words, the NLRB retains exclusive jurisdiction over a claim only when the challenged conduct is an unfair labor practice that is not also subject to § 301(a) jurisdiction.

The purpose of § 301(a) was to encourage the judicial enforcement of collective bargaining agreements. In enacting § 301, Congress recognized the importance, for promoting industrial peace, of "'assuring the enforceability of [collective bargaining agreements]' in the courts." *Id.* at 587 (quoting *Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962)). Moreover, § 301 "authorizes federal courts to fashion a body of law for the enforcement of . . . collective bargaining agreements," *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 451 (1957), and, accordingly, encourages the development of a such a body of law. As the Supreme Court has explained, "[t]he strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976).

III.

In *Mack Trucks*, we considered whether § 301(a) supplied subject matter jurisdiction over suits about the very *existence* of a collective bargaining agreement, or whether that section was limited to suits that posited the existence of the agreement and merely alleged a breach of that agreement. The UAW and Mack Trucks had reached an oral agreement about the terms of a collective bargaining agreement. While the parties were negotiating

contract language to reflect the oral agreement, the UAW filed a grievance alleging that Mack Trucks had unilaterally implemented changes to that agreement. Soon after, the union threatened that, unless the parties settled their disputes and executed a written agreement within a certain period of time, it would declare the agreement void. 856 F.2d at 582-83. Mack Trucks filed suit in federal district court pursuant to § 301(a) seeking a declaratory judgment that the new collective bargaining agreement was valid and enforceable.

The UAW, in that case *challenging* § 301(a) jurisdiction, responded that the court lacked jurisdiction because the suit did not concern a contract claim, but rather implicated only the duties under the NLRA to bargain collectively and in good faith and to reduce the terms of an oral agreement to writing, which are subject to the exclusive jurisdiction of the NLRB. We rejected this argument, noting that even if a suit is subject to the NLRB's jurisdiction, we must determine whether it is also subject to § 301(a) jurisdiction. We found further that Mack Trucks' suit did not turn "*solely* on violations of good faith bargaining, or the duty to execute an agreement . . . which would trigger the NLRB's exclusive jurisdiction." *Id.* at 586 (citations omitted and emphasis added).

We then addressed the central question, whether "suits for violation of contracts" included suits concerning the *validity* of a labor agreement, or whether § 301(a) jurisdiction was limited to suits alleging violations of particular contractual provisions in an existing collective bargaining agreement. We noted that several courts of appeals have limited jurisdiction to suits alleging a breach of a particular provision of a collective bargaining agreement. *See A.T. Massey Coal Co. v. International Union, United Mine Workers of America*, 799 F.2d 142, 146 (4th Cir. 1986); *NDK Corp. v. Local 1550 of Commercial Workers Int'l Union*, 709 F.2d 491, 492-93 (7th Cir. 1983); *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972).

Because § 301(a) "is not free from ambiguity, we interpret[ed] § 301(a) in light of its legislative history, congressional intent,

and underlying policies." *Mack Trucks*, 856 F.2d at 586. In view of these sources, we first concluded that limiting §301(a) jurisdiction to suits that presume the existence of a labor contract "ignores Congress' broader concern that the courts — as opposed to the NLRB — be granted authority to decide disputes of a contractual nature." *Id.* at 588. We held that:

> When, as here, a party seeks enforcement of a labor agreement, and the other party denies the contract's existence, the filing party's declaratory judgment action constitutes an 'enforcement' action. Congress intended that contractual disputes be resolved by the courts applying 'usual processes of the law.' These principles of law apply equally to cases involving breach of an acknowledged contract and those involving a dispute over the agreement's existence.

Id. (citation omitted). In so holding, we distinguished prior cases in which we had found no § 301 jurisdiction on the ground that the claims in those cases were each somehow independent of the collective bargaining agreement. *Id.* at 589. For example, in one case, the plaintiffs claimed that their collective bargaining agreement conflicted with a *pre-agreement* contract of hire. *See Leskiw v. Local 1470, Int'l Bhd. of Elec. Workers*, 464 F.2d 721 (3d Cir. 1972); *see also Adams v. Budd*, 349 F.2d 368 (3d Cir. 1965); *Medlin v. Boeing Vertol Co.*, 620 F.2d 957 (3d Cir. 1980).

IV.

A.

The UAW, back before us and this time trying to *establish* jurisdiction, contends that § 301(a) confers federal jurisdiction over its complaint, characterizing *Mack Trucks* as holding that § 301(a) jurisdiction exists for suits involving questions about the enforceability of a collective bargaining agreement. Textron responds that the district court properly dismissed the UAW's complaint for lack of subject matter jurisdiction under § 301(a) and *Mack Trucks*. First, Textron points out that *Mack Trucks* dealt with whether a collective bargaining agreement actually *existed* between the parties. Because the UAW's claim here is

that the collective bargaining agreement is *voidable* (but not void) because it was secured by fraud in the inducement, and the UAW has acknowledged the existence of the agreement, *Mack Trucks* does not, Textron submits, compel the conclusion that § 301(a) confers jurisdiction. Second, even if *Mack Trucks* establishes § 301(a) jurisdiction for some suits that concern the enforceability of a collective bargaining agreement, the argument continues, § 301(a) supplies jurisdiction only when a party seeks to *enforce* a collective bargaining agreement but not when a party seeks to *repudiate* one, as in this case.

We agree with the UAW, and conclude that § 301(a), as interpreted by *Mack Trucks*, confers jurisdiction over the UAW's fraudulent inducement suit. Taking up first Textron's contention that *Mack Trucks* does not supply jurisdiction when the plaintiff seeks to repudiate the agreement, we believe that the language of *Mack Trucks* itself — that a suit "involving a dispute over the agreement's existence" is subject to § 301(a) jurisdiction — compels the result that a party challenging an agreement's existence can establish § 301(a) jurisdiction.[2]

Moreover, in *Mack Trucks*, we distinguished a case in which the Fourth Circuit held, in a consolidated appeal, that § 301(a) supplied jurisdiction over a union's suit for a declaration that an existing collective bargaining agreement applied to particular employers, but not to an employer's suit challenging the existence of that agreement. *See A.T. Massey Coal Co.*, 799 F.2d at 146. We stated that this "view fails to articulate a legal basis to justify jurisdiction in the union case, but not in the employer's case." *Mack Trucks*, 856 F.2d at 588 n.10.

Additionally, we see no reason why the rationale behind *Mack Trucks* — that by enacting § 301(a) Congress intended that the

---

[2] We acknowledge as much recently when we stated that the "basis of Section 301 jurisdiction in *Mack*" was a claim that "no contract exist-[ed]." *Beverly Enterprises—Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees*, 90 F.3d 93, 95 (3rd Cir. 1996).

courts resolve disputes of a contractual nature, including disputes over the agreement's very existence — does not also apply when the party who files suit seeks a declaration that the agreement is not enforceable. Our conclusion is buttressed in policy terms by the UAW's argument that jurisdiction lies in this case because the union would have raised the fraudulent inducement claim as an affirmative defense had it refused to abide by the collective bargaining agreement and Textron had filed suit under § 301 to enforce it: the development of a consistent body of law in this area depends, in part, on federal court jurisdiction over all claims of a contractual nature, no matter who first resorts to court.

Textron also seeks to distinguish between suits concerning the *existence* of an agreement and those concerning its *enforceability*. As the foregoing discussion suggests, we do not believe that there is any difference under *Mack Trucks* between suits about the existence of a collective bargaining agreement, i.e., seeking declaratory judgment that the agreement is *void*, and suits, like this one, about the enforceability of a collective bargaining agreement, i.e., seeking declaratory judgment that an agreement is *voidable* at the will of that party. The UAW's suit clearly arises from a contractual dispute: a dispute about whether a contract was secured by fraudulent inducement is as much a contract dispute as a dispute about a contract's existence. As we explained in *Mack Trucks*, Congress intended that such suits be "resolved by the courts applying 'usual processes of the law.'" *Mack Trucks*, 856 F.2d at 588.

The Ninth Circuit has already held that § 301(a) confers jurisdiction over fraudulent inducement claims. *See Rozay's Transfer v. Local Freight Drivers*, 850 F.2d 1321, 1326 (9th Cir. 1988) ("Section 301 . . . applies not only to suits for breach of a collective bargaining agreement once it is duly formed, but also to suits impugning the existence and validity of a labor agreement, including those alleging improper conduct or mistake during the formation of the agreement."). (citations omitted)); *International Bhd. of Teamsters v. American Delivery Serv. Co.*, 50 F.3d 770, 773-74 (9th Cir. 1995).

For the foregoing reasons, we conclude that § 301(a) supplies jurisdiction over the UAW's suit alleging that Textron secured the collective bargaining agreement between the parties by fraud in the inducement.

B.

We are also unpersuaded by Textron's contention that the UAW's suit does not give rise to § 301(a) jurisdiction because it arises from pre-contract rights, that is, rights that are "independent" of the collective bargaining agreement. It bases this conclusion on its understanding that the UAW's claims stem from the *negotiation* of the agreement, not from an alleged violation of the terms of the agreement itself, and as such, allege only a violation of the duty to bargain in good faith under the NLRA. In making this argument, Textron relies on several cases which we distinguished in *Mack Trucks*, *see* 856 F.2d at 589, in which we held that § 301(a) did not provide jurisdiction. *See Medlin v. Boeing Vertol Co.*, 620 F.2d 957 (3d Cir. 1980); *Leskiw v. Local 1470, Int'l Bhd. of Elec. Workers*, 464 F.2d 721 (3d Cir. 1972); *Adams v. Budd Co.*, 349 F.2d 368 (3d Cir. 1965). In essence, Textron contends that the UAW's claim is more akin to the pre-*Mack Trucks* cases than it is to the suit in *Mack Trucks*.

In *Adams*, the plaintiffs, employees subject to a collective bargaining agreement, sought jurisdiction under § 301(a) to press the claim that the union and Budd had conspired, in negotiating the collective bargaining agreement, to deprive them of rights contained in their pre-collective bargaining agreement "contracts of hire." Recognizing that these plaintiffs did not allege a violation of the collective bargaining agreement, but rather a "violation by a labor contract of rights which they assert were independently, and pre-agreement, vested in them by their 'contract of hire,'" we held that the plaintiffs had not established § 301(a) jurisdiction. *Adams*, 349 F.2d at 370; *accord Leskiw*, 464 F.2d at 723; *see also Medlin*, 620 F.2d at 962 (refusing to exercise jurisdiction under § 301(a) where the plaintiffs' claims were based on rights inde-pendent of the collective bargaining

agreement: "[T]hese were not rights arising in any way under the collective bargaining agreement.").

We disagree with Textron, because the UAW's suit is not akin to the pre-*Mack Trucks* cases. As we characterized them in *Beverly Enterprises,* those cases held "that federal courts lack Section 301 jurisdiction over challenges to contracts on the basis that they conflicted with the NLRA or some other external agreement." *Beverly Enterprises-Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees,* 90 F.3d 93, 95 (3d Cir. 1996) (affirming dismissal of a complaint where the plaintiff sought only a declaration that a clause in the collective bargaining agreement violated § 8(a)(3) of the NLRA). We thus reject Textron's contention that the plaintiffs in *Adams* failed to establish § 301(a) jurisdiction because their claim turned solely upon adverse effects arising from the *negotiation* of the collective bargaining agreement. While we agreed with the defendant union's argument in *Adams* that the suit had to do with the negotiation of the agreement rather than whether the agreement had been breached, *see Adams,* 349 F.2d at 369, our conclusion that § 301(a) did not confer jurisdiction was based on the fact that the plaintiffs' suit alleged a violation of their rights contained in a pre-agreement contract, not on the fact that the plaintiffs' claim concerned the negotiations rather than the collective bargaining agreement itself.

Contrary to the pre-*Mack Trucks* line of cases, the UAW's claim that the collective bargaining agreement was secured by fraud in the inducement arises not out of the NLRA or another contract, but out of the collective bargaining agreement itself. The claim alleges flaws in the basic formation of the collective bargaining agreement, and its resolution is integral to the question whether the agreement is enforceable. In other words, Textron's allegedly fraudulent conduct goes to the heart of the enforceability of the collective bargaining agreement between the parties. Thus, the UAW is seeking to enforce rights that exist under the collective bargaining agreement.

In short, the claim here can be adjudicated without consideration of rights possessed by the parties under any other agreement or the NLRA. As such, this case clearly does not fall within the pre-*Mack Trucks* line of cases. Hence, even if the UAW's claim could arguably constitute an unfair labor practice under § 7 or § 8 of the NLRA, the UAW's claim is not solely a claim under the NLRA, and is subject to the concurrent jurisdiction of both the federal district courts and the NLRB.[3]

The order of the district court dismissing the complaint for lack of subject matter jurisdiction will be reversed and the case remanded for further proceedings.[4]

---

[3] In this regard, we note that it is not clear that the NLRB actually would have jurisdiction over the UAW's fraudulent inducement claim. According to the UAW, the duty to bargain in good faith under §§ 8(a)(5) and 8(d) of the NLRA is qualitatively different from its fraud in the inducement claim. While the claims of bad faith bargaining and of fraudulent inducement may overlap both factually and legally, they are not identical.

[4] Textron has also argued that the UAW's complaint must be dismissed because the union failed to exhaust the grievance procedures contained in the collective bargaining agreement before filing suit. The district court did not reach this issue when it dismissed the complaint, and should do so on remand.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AMERICA, and ITS LOCAL 787, Plaintiff,	: No. 4: CV-95-1918 : JUDGE McCLURE
v.	
TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP., Defendant	

ORDER

March 21, 1996

BACKGROUND:

On November 16, 1995, plaintiff United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 787 ("UAW") initiated this action with the filing of a complaint pursuant to the National Labor Relations Act and the Labor Management Relations Act, 29 U.S.C. §§ 141 et seq. UAW alleges that defendant Textron Lycoming Reciprocating Engine Division, Avco Corp. (misnamed in the complaint; referred to as "Textron" hereinafter), fraudulently induced UAW to enter into a collective bargaining agreement. UAW seeks a declaration by the court that the collective bargaining agreement therefore is voidable at the option of UAW.

Before the court is a motion by Textron to dismiss pursuant to Fed. R. Civ. P. 12 (b) (l), (6).

DISCUSSION:

I. STANDARD OF REVIEW

A complaint must be dismissed under Fed. R. Civ. P. 12 (b) (1) if the court lacks jurisdiction over the subject matter. Subject matter jurisdiction is the "[p]ower of a particular court to hear the type of case that is then before it," Black's Law Dictionary 854 (6th ed. 1990), as distinguished from *in personam* and *in rem* jurisdiction.

Subject to certain congressional restrictions, the subject matter jurisdiction of a federal district court extends to cases arising under the Constitution, laws, and treaties of the United States. U.S. Const. art. III, § 2, cl. l; 28 U.S.C. § 1331. A complaint should not be dismissed for lack of jurisdiction if it reveals any grounds for assertion of jurisdiction. *Doran v. Lee*, 287 F. Supp. 807, 813 (W.D. Pa. 1968).

A motion to dismiss under Fed. R. Civ. P. 12(b) (6) admits the well pleaded allegations of the complaint, but denies their legal sufficiency. *Hospital Building Co. v. Trustees of the Rex Hospital*, 425 U.S. 738, 740 (1976). "It is the settled rule that 'a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Leone v. Aetna Casualty & Surety Co.*, 599 F.2d 566, 567 (3d Cir. 1979) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, (1957)). The complaint must be read in a light most favorable to the plaintiff with every doubt resolved in plaintiff's favor. *In re Arthur Treacher's Franchise Litigation*, 92 F.R.D. 398, 422 (E.D. Pa. 1981).

II. FACTS ALLEGED IN THE COMPLAINT

According to the complaint, UAW is a labor organization which is the exclusive bargaining representative for the employees of Textron's facilities in Williamsport, Lycoming County, Pennsylvania. Textron manufactures aircraft engines, employing approximately 500 employees in and around Williamsport. UAW

and Textron are parties to a collective bargaining agreement ("CBA") which covers the time period from April 1, 1994, to April 4, 1997.

Prior to entering into the CBA, the parties entered into negotiations concerning its terms. UAW demanded certain information during that process, including a demand that Textron disclose whether it intended to move or subcontract bargaining unit work then performed at its Williamsport facilities. Textron disclosed no such plans. In fact, an official from Textron denied that any such plan was under consideration.

However, during the time of the negotiations, Textron in fact was planning to subcontract a substantial part of its parts production operations. Implementation of the plan could result in the layoff of about half of the employees represented by UAW at Textron's Williamsport plant. The plan was not disclosed during the negotiations, thereby keeping the issue out of the negotiations.

The secret plan to subcontract work was adopted formally by the Textron Board of Directors after UAW agreed to and ratified the CBA for the 1994 - 1997 period. The plan and projected loss of employees was announced to UAW and its members on June 2, 1994. UAW would not have agreed to the CBA had the information regarding the subcontracting been made available to it.

III. DEFENDANT'S ARGUMENTS

Textron proffers two basic arguments as the reasons for which dismissal is appropriate. First, Textron contends that the court does not have jurisdiction over a matter concerning the negotiation of the CBA because such matters are within the exclusive province of the National Labor Relations Board. Also, Textron contends that UAW has failed to exhaust its administrative remedies. Because we find no jurisdiction, we will not reach the 'question of administrative remedies.

IV. JURISDICTION UNDER § 301

Both parties cite two primary authorities which govern disposition of Textron's motion to dismiss. The first is § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), and the second is *Mack Trucks, Inc. v. International Union, United Auto-mobile, Aerospace and Agricultural Implement Workers of America, UAW*, 856 F.2d 579 (3d Cir. 1988).

Under § 301(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

This case involves an action based on the negotiation of the CBA, not for violation of the CBA, so that this case does not fall under § 301(a). UAW argues, however, that federal district courts have jurisdiction over cases involving the existence of a CBA, and that it is seeking a declaration that no CBA exists.

Actually, UAW concedes that a CBA exists. Complaint at 2 ¶ 3. Moreover, although the Third Circuit in *Mack Trucks* discussed at length the fact that a district court has jurisdiction to determine whether a CBA exists, its reasoning was based on the principle that a district court may enforce the parties' rights under a CBA, but may not reach a claim which is independent of the contract. 856 F.2d at 589. In this case, UAW's claim is independent of the terms of the contract. *See esp. Medlin v. Boeing Vertol Co.*, 620 F. 2d 957, 962 (3d Cir. 1980) (no jurisdiction under § 301(a) when rights did not arise under CBA).

The plainest statement of our holding is set forth in *Mack Trucks* itself: "[W]e do not find that Mack's suit turns solely on violations of good faith bargaining, or the duty to execute an

agreement, *see* §§ 158 (a) (3), (5), (d), which would trigger the NLRB's exclusive jurisdiction." 856 F.2d at 586. Here, UAW's suit turns solely on in alleged violation of good faith bargaining. It is the remedy it seeks, i.e. a declaration that the CBA is voidable, and not the cause of action itself, that raises the question of the existence of a valid agreement.

In short, UAW is not seeking in any way to enforce its rights under the CBA, or to show that a valid CBA exists (which would make the enforcement of its terms a matter of law). Rather, it is attempting to show that Textron negotiated in bad faith, a matter within the exclusive jurisdiction of the NLRB. That UAW seeks as a remedy to render the CBA voidable does not alter the fundamental nature of the suit as one based on bad faith. In no way can UAW's claim be classified as one for "violation of [a] contract[ ] between an employer and a labor organization" under § 301(a).

Textron's motion to dismiss under Rule 12 (b) (1) will be granted.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The motion (record document no. 2) by defendant Textron to dismiss for lack of subject matter jurisdiction is granted.

2. Plaintiff UAW's complaint is dismissed pursuant to Fed. R. Civ. P. 12 (b) (1).

3. The clerk is directed to close the file.

/s/ James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-7261

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,
Appellant,

v.

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Appellee.

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 95-cv-01918)

Present: BECKER and ROTH, *Circuit Judges*; and, BARRY,* *District Judge*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was argued by counsel January 30, 1997.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court entered April 21, 1996, be, and the same is hereby reversed and the cause remanded to the said District Court for further proceedings con-

sistent with the Opinion of this Court. Costs taxed against appellee. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/Robert A. Barth
Robert A. Barth
Chief Deputy Clerk

DATED: July 1, 1997

* Honorable Maryann Trump Barry, United States District Judge for the District of New Jersey, sitting by designation.

STATUTORY PROVISIONS

29 U.S.C.§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a

labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Supreme Court, U.S.
FILED
OCT 14 1997
CLERK

(2)

No. 97-463

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,
v.
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Avenue
Detroit, Michigan 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036
(202) 828-8500

Attorneys for Respondents

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

17 pp

QUESTION PRESENTED

Do the federal courts have jurisdiction under Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185, to consider claims that a collective bargaining agreement is not enforceable because of a defect in the formation of the agreement such as fraud in the inducement?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT OF FACTS	1
I. The Complaint	1
II. Proceedings Below	3
REASONS FOR DENYING THE WRIT	4
CONCLUSION	12

TABLE OF AUTHORITIES

CASES — Page

A.T. Massey Coal Co., Inc. v. International Union, United Mine Workers of America, 799 F.2d 142 (4th Cir. 1986) 10
Bd. of Trustees v. Universal Enterprises, Inc., 751 F.2d 1177 (11th Cir. 1985) 5, 11
Beverly Enterprises—Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees, 90 F.3d 95 (3rd Cir. 1996) 8
Black-Clawson Co. v. Int'l Ass'n of Machinists Lodge 355, 313 F.2d 179 (2d Cir. 1962) 11
Chicago Typographical Union No. 16 v. Chicago Sun Times, 935 F.2d 1501 (7th Cir. 1991) 9
Corvalis Sand & Gravel Co. v. Hoisting Portable Eng'rs, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967) 10
El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. Gen. Contractors, 376 F.2d 797 (5th Cir. 1967) 11
Hernandez v. National Packing Co., 455 F.2d 1252 (1st Cir. 1972) 8, 9, 10
Heussner v. National Gypsum Company, 887 F.2d 672 (6th Cir. 1989) 8, 9, 10
Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) 5
I.B.E.W., Local 481 v. Sign-Craft Inc., 864 F.2d 499 (7th Cir. 1988) 5, 9
Kozera v. Westchester-Fairfield Chapter, 909 F.2d 48 (2nd Cir. 1990) 6
Mack Trucks, Inc. v. Int'l Union, UAW, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989) 3, 6, 9
McNally Pittsburg, Inc. v. Intern. Iron Workers, 812 F.2d 615 (10th Cir. 1987) 6, 7, 9
Mogge v. District No. 8, 387 F.2d 880 (7th Cir. 1967) 6
Operating Engineers v. Wilson, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1992) 6, 7

TABLE OF AUTHORITIES—Continued

Page

Rozay's Transfer v. Local Freight Drivers, L.208, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) 6, 7
Smith v. Evening News, 371 U.S. 195 (1962) 5
Teamsters Local 952 v. American Delivery, 50 F.3d 770 (9th Cir. 1988) 6, 7
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957) 5
United Steelworkers of Am., AFL-CIO v. Rome Industries, Inc., 437 F.2d 881 (5th Cir. 1970) 6
Vaca v. Sipes, 386 U.S. 171 (1967) 5
William E. Arnold Co. v. Carpenters Dist. Council, 417 U.S. 12 (1974) 5

STATUTE

Section 301, 29 U.S.C. § 185 ..... *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-463

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF FACTS

I. The Complaint

Respondent in this case is the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 787 (hereinafter "the UAW"). For many years, the UAW has had a collective bargaining relationship with "Textron Lycoming Reciprocating Engine Division, Avco Corporation," which is a wholly owned subsidiary of Textron Inc.[1]

---

[1] This is the name of the employer as spelled out in the most recent collective bargaining agreement between the two parties. In deference to the footnote at p. ii. of the Petition, the Employer is herein referred to as AVCO/Textron.

Prior to beginning negotiations for the 1994-97 contract, the UAW submitted a detailed request to AVCO/Textron seeking information to prepare for the upcoming negotiations. (Pet. App. 2a-3a). One portion of the request concerned whether the Company had plans to subcontract the work currently being performed by UAW members at the plant. *Id.* This request included a demand for any written materials which the Company had prepared on the issue of subcontracting. When the parties commenced actual bargaining, the UAW specifically renewed its request that the Company disclose any plans it had to subcontract bargaining unit work. (Pet. App. 3a). In response to the request, the Vice-President for Human Resources said that he had no knowledge of such plans and promised to ascertain whether his knowledge was correct. (Pet. App. 3a). The UAW and AVCO/Textron concluded a collective bargaining agreement in March 1994, which was ratified by the membership at the beginning of April, 1994 (Pet. App. 3a).

While the Company was bargaining, it developed a plan to subcontract the parts production work at the plant. Despite the Union's repeated requests for information on this topic, and the Company's promise to provide information on any such plans, this plan was never disclosed to the Union during negotiations. (Pet. App. 3a). Full implementation of this plan will cause about half of the Union's membership to lose their jobs. (Pet. App. 3a). The plan was formally approved by the Company's Board of Directors shortly after the UAW members ratified the contract. It was announced to the Union membership approximately two months later. *Id.*

The UAW would have bargained far differently if the Company had been truthful in responding to the Union's repeated requests for information or if the Company had abided by its promise to provide information if it developed any plans to eliminate work from the facility by subcontracting. As a result of its reasonable reliance on the Company's misrepresentations and promises to provide additional information if it became available, the UAW did not raise the issue of subcontracting bargaining unit work during the rest of negotiations. It made no contract demands on the issue and did not further pursue its request for information.[2] (Pet. App. 3a). Instead, in reasonable reliance on the employer's representations during bargaining, the UAW and its members agreed to a labor contract —including a promise not to engage in a strike during the term of the contract.

II. The Proceedings Below

The Complaint sought a declaration that the collective bargaining agreement was voidable because AVCO/Textron made fraudulent misrepresentations during the negotiation of the collective bargaining agreement. The UAW sued under Section 301 of the Labor Management Relations, Act 29 U.S.C. Section 185, and the Third Circuit's prior decision in *Mack Trucks, Inc. v. Intern. Union, UAW*, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989). The court in *Mack Trucks* held that Section 301, which establishes jurisdiction over suits "for violation of" collective bargaining agreements, necessarily includes the authority to determine the existence of those agreements. Any other result, the court reasoned, would undermine the broad authority of the federal courts to develop a consistent body of law of federal common law for the enforcement of collective bargaining agreements.

---

[2] While it is impossible to state for certain what would have happened had the Company disclosed its plans, it is safe to say that the Union would have made demands to protect the wages and incomes of its members subject to layoff. It is reasonable to predict that the Union would have achieved some of its goals in this respect because it would have had the power to threaten to strike in support of its demands. This weapon is much less potent during the term of the contract, where, as here, the contract contains a "no-strike" clause.

AVCO/Textron moved to dismiss for lack of subject matter jurisdiction. The Company argued that that Section 301 does not grant the federal courts jurisdiction in cases where the plaintiff does not assert a breach of the collective bargaining agreement. The District Court granted the Motion to Dismiss.

The Court of Appeals overturned the decision of the District Court. Relying on *Mack Trucks*, the court held that there is no legal or logical distinction based upon which party to a lawsuit asserted the defect in the formation of the contract. It concluded that the broad federal jurisdiction over the enforcement of labor contracts included claims that go to the formation of collective bargaining agreements because the resolution of the fraud issue was "integral to the question of whether the agreement is enforceable." (Pet. App. 12a). Having thus disposed with the jurisdictional issue raised by AVCO/Textron, the court remanded the case for further proceedings in order to determine whether, in fact, the contract was the product of fraudulent misrepresentations and, if so, what remedy would be appropriate.[3]

REASONS FOR DENYING THE WRIT

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, provides jurisdiction in the federal courts for all "[s]uits for violation of contracts between an employer and a labor organization." It is, of course, well set-

[3] The UAW has also pursued its remedies under the National Labor Relations Act. On April 30, 1996, several months after the filing of the complaint in this case, Region Four of the NLRB issued a complaint in Textron Lycoming, Case No. 4-CA-23285. The case was set for trial on April 17, 1997. Two weeks before trial, AVCO/Textron made an offer to unilaterally settle the case, which the UAW has opposed. As of this date, the UAW's objections to the proposed unilateral settlement are still before the Regional Director and Region Four has not accepted the proposed settlement. The ULP trial has been postponed pending the decision of the Region whether to accept the proposed settlement.

tled that this provision requires federal courts "to fashion a body of law for the enforcement of . . . collective bargaining agreements." *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 451 (1957). It is also beyond dispute that this body of law is to be fashioned in accordance with the "usual process of the law," including all of the "remedial proceedings, both legal and equitable, as might be appropriate in the circumstances, [including actions] under the Declaratory Judgments Act." *Id.* at 452-453, 456 (quoting H.R. Conf. Rep. No. 510, 80th Cong. 1st Sess., p. 42 and 93 Cong. Rec. 3656-3657).

It is also beyond dispute that this broad authority over contract matters overlaps with the jurisdiction that would otherwise lie exclusively with the National Labor Relations Board, which regulates many other aspects of the relationship between an employer and its employees. But, as Section 301 demonstrates, "[t]he strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976). See also, *William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 16 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Smith v. Evening News*, 371 U.S. 195, 197-98 (1962).

Finally, it is common ground that, when a party brings suit to enforce a labor contract under Section 301, the defending party may raise all of the defenses available under the "usual processes of the law" in connection with contract enforcement actions, such as a claim that the contract never came into existence. See, e.g., *I.B.E.W., Local 481 v. Sign-Craft Inc.*, 864 F.2d 499 (7th Cir. 1988); *Bd. of Trustees v. Universal Enterprises, Inc.*, 751 F.2d 1177 (11th Cir. 1985); *Trust v. Gilliam*, 737 F.2d 1501

(9th Cir. 1984); *United Steelworkers of Am., AFL-CIO, v. Rome Industries, Inc.*, 437 F.2d 881 (5th Cir. 1970); *Mogge v. District No. 8*, 387 F.2d 880, 882 (7th Cir. 1967). Based upon this precedent, many courts have allowed potential defendants to seek declaratory judgments regarding their contractual obligations. *Teamsters v. American Delivery*, 50 F.3d 770 (9th Cir. 1995); *Operating Engineers v. Wilson*, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1991); *Mack Trucks, Inc. v. Int'l Union UAW*, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989); *Rozay's Transfer v. Local Freight Drivers, L. 208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989); *McNally Pittsburg, Inc. v. Intern. Iron Workers*, 812 F.2d 615 (10th Cir. 1987).

In *Kozera. v. Westchester-Fairfield Chapter*, 909 F.2d 48 (2nd Cir. 1990) for example, the Second Circuit noted that Section 301 provides federal district courts with jurisdiction over actions to enforce labor contracts and then reasoned as follows:

> It is axiomatic . . that to determine whether a breach of an agremeent has occurred, a court must necessarily determine whether a valid agreement exists in the first place. Ancillary to determining the merits of an action for breach of a collective bargaining agreement, therefore, is the power to declare a purported agreement either invalid or binding.

Kozera, supra, 909 F.2d at 52 (citing other cases listed above).

1. With that much as background, it is plain that the question presented here is a narrow one: given that a party to a contract enforcement action may defend on the ground of "fraud in the inducement," may a party initiate an action to rescind a contract on that same basis. With the decision below, three Circuits have now answered this

question in the affirmative. Not a single court has reached a contrary conclusion. *Teamsters v. American Delivery, supra*, 50 F.3d at 774. (A "claim for fraud in the inducement may be brought directly in federal courts under Section 301(a)"); *McNally Pittsburg, Inc. v. Intern. Iron Workers*, 812 F.2d 615 (10th Cir. 1987). *Accord: Operating Engineers v. Wilson*, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1992); *Rozay's Transfer v. Local Freight Drivers, L.208*, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989).

Thus, the Court of Appeals here properly noted that a party *defending* a contract enforcement action could certainly assert "fraud in the inducement" as a defense to such action. And, as the court below properly reasoned, nothing in the langauge or policy of Section 301 compels a different result when the party initiating the action claims that a contract should be rescinded for the same reason. (Pet. App. 10a-11a).

In fact, a holding to the contrary would lead to absurd results: parties seeking to challenge the validity of a contract would be forced to breach that contract, await a Section 301 action for contract enforcement by the other party, and then defend that action based on a "fraud in the inducement" theory. In the present case, for example, the UAW would have had to breach the contract by striking in violation of the no-strike clause in order to create a situation in which a district court could entertain its argument that the contract was induced by fraud. There is no reason to require such a result and, not surprisingly, not a single court has so held.

2. It should by now be clear that the "split in the circuits" cited by the Petitioner is much less than meets the eye. As noted above, no Court of Appeals holds that the federal courts lack jurisdiction when a party sued for breach of contract defends on the basis that the contract

was not properly formed. And not a single Court of Appeals has held that § 301 jurisdiction is lacking when an employer or a union seeks a declaration that a purported contract should be rescinded when that purported contract was obtained through fraud. On the narrow question presented here, then, there is simply no conflict in the lower court authority.

The cases cited by Petitioner from the First and Sixth Circuits evolved in situations much different than here and, as discussed below, are entirely beside the point.

In *Hernandez v. National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972), a group of employees sought to invalidate a collective bargaining agreement because—they claimed—it conflicted with the National Labor Relations Act since the union no longer represented the majority of the employees in the unit. In effect, they argued that their union was no longer properly their exclusive representative and that it therefore had no right to bind them to a contract. Such determinations of representative status, however, are within the exclusive jurisdiction of the NLRB. The refusal to entertain a suit under Section 301 raising such issues certainly has no bearing on whether Section 301 creates jurisdiction for garden-variety issues of contract formation such as claims of fraud in the inducement.[4]

Petitioner's reliance on *Heussner v. National Gypsum Company*, 887 F.2d 672 (6th Cir. 1989) fares no better. In *Heussner*, a group of employees asserted that the plant closing agreement negotiated by the union was invalid be-

[4] The Third Circuit has likewise rejected an attempt to invalidate a contract provision because it did not raise traditional contract formation issues but instead centered on claims within the exclusive competence of the National Labor Relations Board. *Beverly Enterprises—Pennsylvania, Inc. v. District 1199C National Union of Hospital and Health Care Employees*, 90 F.3d 95 (3rd Cir. 1996). The Third Circuit had no trouble harmonizing its holding in *Beverly Enterprises* with the decision at issue here.

cause it eliminated their rights under the *preceding* collective bargaining agreement. The court in *Heussner* rejected this claim. In effect, the court held the plaintiffs could not rely on a collective bargaining agreement that had been superseded to establish Section 301 jurisdiction. In doing so, the Sixth Circuit relied on the discussion in the *Mack Trucks* case of a similar line of Third Circuit cases which held that the federal courts had no jurisdiction under Section 301 to enforce contractual rights that arose either prior to or independently of the collective bargaining agreement. *Heussner, supra,* 887 F.2d at 676 & n. 2 (citing discussion in *Mack Trucks, supra,* 856 F.2d at 589.

The opinion below carefully reviewed and distinguished these kinds of cases, holding that Section 301 jurisdiction existed here because the complaint

> "alleges flaws in the basic formation of the collective bargaining agreement and its resolution is integral to the question of whether the agreement is enforceable." (Pet. App. 12a).

Thus, the holdings in *Heussner* and *Hernandez* are in no sense in conflict with the decision at issue here.[5]

[5] Petitioner's claim that the state of the law in the Seventh Circuit is "unclear" (Pet. 12) is somewhat puzzling given that the Seventh Circuit plainly stated in *IBEW v. Sign-Craft*, 864 F.2d 499, 502 (7th Cir. 1988), that Section 301 grants jurisdiction over "any dispute[] about the meaning or validity of collective bargaining agreements." Given that holding, it is hard to understand how Petitioner can argue that the Seventh Circuit would reach a different result in the present case. *See, Chicago Typographical Union No. 16 v. Chicago Sun Times*, 935 F.2d 1501, 1504 (7th Cir. 1991) (pointless to make federal jurisdiction turn on which party sued first, because other party could force a lawsuit by disregarding arbitration award).

Petitioner also claims that both the Tenth and First Circuits have "recognized" the purported conflict in the Circuits, and supports this claim with cites to *McNally* and *Hernandez*. (Pet. 8). In the passages cited in *McNally*, the Tenth Circuit makes reference

That leaves only the Fourth Circuit decision in *A.T. Massey Coal Co. v. Int'l Union*, 799 F.2d 142 (4th Cir. 1986). That decision held that Section 301 jurisdiction existed over the union's complaint to compel arbitration, but not over an employer's lawsuit for a declaration to the contrary. But, as in *Hernandez* and *Heussner*, the employer's efforts to be released from its obligations in *Massey* were premised—not on traditional doctrines of contract formation such as "fraud in the inducement"—but rather on doctrines developed under the National Labor Relations Act on the issue of when an employer could properly withdraw from a multi-employer bargaining association. Since complex questions of when, how, and under what circumstances an employer may withdraw from a multi-employer bargaining unit lie at the heart of labor law, it is not surprising that the court left those questions to the NLRB when it had jurisdiction over the arbitration claim by virtue of the union's parallel lawsuit. As with the decisions from the First and Sixth Circuits on which Textron here relies, the decision of the Fourth Circuit in

---

to the now-overruled decision of the Seventh Circuit in *NDK Corp. v. Local 1550, UFCW*, 709 F.2d 491 (7th Cir. 1983), as well as decisions from the Third and Ninth Circuits. But, as discussed in text, the Ninth Circuit has now fully embraced the principle that Petitoner seeks to disturb, and it is the Third Circuit that rendered the decision below from which Petitioner now seeks relief. There is therefore absolutely no conflict between the decisions of the Third, Ninth, and Seventh Circuits on the question presented here. Moreover, as discussed in text, the decision in *Hernandez* was based on an entirely different argument: that the union no longer enjoyed the support of a majority of the employees.

Finally, Petitioner's reliance on the 30 year old decision from the Oregon Supreme Court, *Corvalis Sand & Gravel Co. v. Hoisting Portable Eng'rs*, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967) (Pet. 10), is entirely misplaced both since the decisions of state courts are not particularly informative as to the interpretation of federal law and because that decision was rendered without the benefit of the caselaw developments discussed in text, all of which are subsequent to that state court decision.

Massey simply does not address—let alone resolve—the question of whether Section 301 jurisdiction is present to determine garden-variety questions of contract formation such as those at issue here.[6]

3. As just described, the three cases on which Textron relies involved legal issues much different than that presented here. Any language in those cases which could be read as depriving courts of jurisdiction over Section 301 actions raising garden-variety issues of contract formation and enforcement is unnecessary to the holdings there and cannot form the basis of a conflict in the circuits.

To the extent that the dicta in those cases be read to foreclose actions such as that at issue here, however, we submit that such a result would be contrary to the well-settled authority that—under Section 301—contract disputes are to be resolved by the district court in accordance with the "usual processes of the law." Moreover, as described above, any result that would force a party seeking review of the circumstances surrounding contract formation to violate the contract plainly has little to recommend it.

In short, there is no conflict in the holdings of the lower courts on this issue and review by this Court is unnecessary.

---

[6] The Fourth Circuit's decision is also inconsistent with other long standing precedent. See, *Bd. of Trustees v. Universal Enterprises, Inc.*, 751 F.2d 1177 (11th Cir. 1985) (court has jurisdiction to consider whether alter ego is bound by collective agreement); *El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. Gen. Contractors*, 376 F.2d 797 (5th Cir. 1987) (union could obtain declaratory judgment regarding legality of subcontracting clause under Section 301 without alleging "a violation of" labor contract); *Black-Clawson Co. v. Int'l Ass'n of Machinists Lodge 355*, 313 F.2d 179, 181 (2d Cir. 1962) (employer may use Section 301 to seek a declaration that a grievance is not arbitrable).

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Avenue
Detroit, Michigan 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036
(202) 828-8500

Attorneys for Respondents

(3)

Supreme Court, U.S.
FILED
OCT 24 1997
CLERK

No. 97-463

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY FOR PETITIONER

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

5 pp

REPLY FOR PETITIONER

As demonstrated in the petition, this case presents an important and recurring question over which the lower courts are divided. Respondent, while characterizing the question presented as "narrow" (Opp. at 6), does not dispute that the question is important and recurring. Instead, respondent argues that there is no conflict among the lower courts. This argument is based upon spurious distinctions that have no basis in either the relevant statute or the cases themselves.

1. Although respondents may be unable to find any conflict among the circuits, as the petition demonstrated (Pet. at 8, 11, 12), the courts of appeals have had no such problem. The Fourth Circuit noted the conflict two years ago when it held that Section 301 of the National Labor Relations Act, 29 U.S.C. § 185, "excludes from federal court jurisdiction suits challenging the validity of collective bargaining agreements" despite "numerous decisions by other circuits holding that federal courts do have subject matter jurisdiction to determine whether a collective bargaining agreement is valid." *Jones v. Union Carbide Chemicals & Plastics Co.*, No. 94-1145, 1995 WL 564404, at *2 & n.3 (4th Cir. Sept. 25, 1995).

Similarly, the Sixth Circuit recognized that its interpretation of Section 301, which "precludes district courts from determining the validity of collective bargaining contracts," is "adhered to by several circuits" and contradicted by other circuits "allowing district courts to determine the existence or validity of contracts under Section 301(a)." *Heussner v. National Gypsum Co.*, 887 F.2d 672, 676 n.2 (6th Cir. 1989). The Tenth Circuit has likewise recognized the conflict among the courts of appeals. *McNally Pittsburgh, Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 617-19 (10th Cir. 1987).

The Third Circuit in this case also recognized the conflict, as it had earlier in *Mack Trucks, Inc. v. International Union, UAW*, 856 F.2d 579, 589 n.10 (3d Cir. 1988) (disagreeing with the holdings of the First and Fourth Circuits), *cert. denied*, 489 U.S. 1054 (1989). As the Third Circuit acknowledged below, while it interprets Section 301 to "apply equally to cases involving breach

of an acknowledged contract and those involving a dispute over the agreement's existence," Pet. App. 8a (quotation omitted), other circuits have "limited jurisdiction [under Section 301] to suits alleging a breach of a particular provision of a collective bargaining agreement." *Id.* at 7a (citing, among others, *A.T. Massey Coal Co. v. International Union, United Mine Workers*, 799 F.2d 142, 146 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987), and *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972)). Indeed, in the ruling below, the Third Circuit again specifically rejected the Fourth Circuit's holding in *A.T. Massey* that Section 301 does not apply "to an employer's suit challenging the existence of [a collective bargaining] agreement." Pet. App. 9a. Thus, the Third Circuit had no doubt that its decision was in the conflict with other court of appeals decisions.

2. Respondent asserts that there is no conflict with the decision below because "[n]ot a single court has reached a contrary conclusion." Opp. at 7. As the petition demonstrated (Pet. at 8-10), this is simply not true.

a. The Sixth Circuit's decision in *Heussner* squarely conflicts with the decision below. In *Heussner*, an employer reached an agreement with a union over the closing of a plant which superseded a prior collective bargaining agreement and guaranteed the workers' severance benefits. *See* 887 F.2d at 674. After the plant was sold, several workers became dissatisfied with the new agreement and sued. Much like respondent's claim here, the first count of their complaint "requested that the district court rescind the [new agreement] because [the employer] procured the agreement through fraud, duress, coercion, and intimidation." *Id.* at 675-76. In addition, as here, the workers alleged that the employer had failed to "supply relevant information" during bargaining. *Id.* at 676. Unlike the Third Circuit, however, the Sixth Circuit held that it had no jurisdiction over this claim because Section 301(a) does not "give district courts jurisdiction over the *validity* of collective bargaining contracts." *Id.*

Respondent does not attempt to distinguish the Sixth Circuit's ruling on this count of the complaint in *Heussner*. Instead, respondent ignores that count entirely and focuses instead upon two other counts of the complaint, "which stated claims of successor liability and breach of contract based on the terms of the [original collective bargaining agreement]." *Heussner*, 887 F.2d at 676; *see* Opp. at 9. Respondent does not, however, even begin to explain how the Sixth Circuit's treatment of the second and third counts in *Heussner* undermines the conflict created by that court's ruling on the first court. To the contrary, respondent appears to be trying to create the inaccurate impression that the *Heussner* did not reject an attempt to exercise federal court jurisdiction over a suit based upon a fraud-in-the-inducement claim.

b. The decision below is also in conflict with the Fourth Circuit's decision in *A.T. Massey*, which held that "a plaintiff must allege breach of an existing collective bargaining contract in order to avail itself of jurisdiction under § 301 of the Act." 799 F.2d at 146. Respondent tries to distinguish this decision on the ground that the employer in that case did not base its suit on "traditional doctrines of contract formation such as 'fraud in the inducement'" but instead relied upon "doctrines developed under the National Labor Relations Act." Opp. at 10. While it is true that the Massey Company and many of its affiliates sought a declaratory judgment based on the argument they were not "a common, or single, employer," and therefore were not bound by another affiliate's signing of a nation-wide collective bargaining agreement, 799 F.2d at 144, the Fourth Circuit's decision did not turn upon the particular issue presented but rather on the general lack of Section 301 jurisdiction over lawsuits where a breach is alleged. *See id.* at 146.

c. Finally, respondent's attempt to distinguish the First Circuit's decision in *Hernandez* is without merit. Respondent points out that *Hernandez* did not address "garden-variety issues of contract formation." Opp. at 8. Nothing, however, in the First Circuit's decision turned upon the traditional or non-traditional nature of the issue before it. Instead, the First Circuit

held that there was no jurisdiction over the plaintiffs' claim because Section 301 applies to "[s]uits for *violation* of contracts between an employer and a labor organization" and the plaintiffs did not seek "to vindicate their rights under the contract." *Hernandez*, 455 F.2d at 1253; *see also Mack Trucks*, 856 F.2d at 589 (noting that *Hernandez* "concluded that the plain language of § 301 bars jurisdiction to consider a suit concerning the existence of a collective bargaining agreement").

Courts applying this approach have found no jurisdiction where "garden-variety" contract formation defenses were asserted. *See Adcox v. Teledyne, Inc.*, 21 F.3d 1381, 1386 (6th Cir.) (finding no jurisdiction over claims that the contract lacked consideration and was unconscionable), *cert. denied*, 513 U.S. 871 (1994); *Corvallis Sand & Gravel Co. v. Hoisting & Portable Eng'r*, 419 P.2d 38, 40, 44 (Ore. 1966) (en banc) (finding no jurisdiction over claims of duress and coercion), *cert. denied*, 387 U.S. 904 (1967).

3. Notably absent from the opposition is any serious defense of the decision below. Although the petition demonstrated that the decision conflicts with the plain language of Section 301 (Pet. at 12-13), respondent does not attempt to derive the ruling below from the language of Section 301. Instead, respondent argues that there is no reason to permit a party to defend against a contract violation claim under Section 301 based upon fraud in the inducement while preventing that same party from bringing declaratory judgment actions under Section 301 on the same ground. Opp. at 7. In fact, there are at least two compelling reasons for doing so.

First, Section 301 dictates the different treatment. Section 301 does not confer jurisdiction over all suits of a contractual nature: it confers jurisdiction over "[s]uits for violation of contracts." 29 U.S.C. § 185(a). Thus, it is the plain language of the statute that draws the distinction between suits alleging contractual violations and suits that do not.

Second, this distinction protects the Board's remedial authority. When claims alleging contractual violations are bought under

Section 301, there is little risk of courts imposing a remedy that conflicts with the Board's remedy because the Board has no authority to remedy violations of contract. *See, e.g., Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-12 (1962). When, however, a Section 301 claim is based upon fraud in the inducement, there is a significant risk of conflict because the Board can consider and, more important, remedy such conduct. Indeed, in this case, respondent filed its suit in federal court after the Board refused to seek the relief that respondent now seeks in federal court. *See* Pet. at 15 n.9. Avoiding the potential for such conflicts is a recognized — and compelling — reason for limiting the jurisdiction of the federal courts. *See, e.g., Garner v. Teamsters Local No. 776*, 346 U.S. 485, 498-99 (1953).

4. If there is any doubt over whether to grant the petition, this Court should invite the Solicitor General to express the view of the United States.

CONCLUSION

For the foregoing reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy B. Dyk
(*Counsel of Record*)
Andrew M. Kramer
Daniel H. Bromberg
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

October 24, 1997

(4)

SUPREME COURT, U.S.
FILED
DEC 29 1997

No. 97-463

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Avenue
Detroit, Michigan 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036
(202) 828-8500

Counsel for Respondent

Petition for Certiorari Filed September 12, 1997
Certiorari Granted November 14, 1997

32 pp

TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Agreement between Textron Lycoming and UAW and its Local 787 (April 1, 1994) 4

Complaint filed in the United States District Court for the Middle District of Pennsylvania (Nov. 16, 1995) 16

Order of the United States District Court for the Middle District of Pennsylvania (March 21, 1996) 21

Notice of Appeal filed in United States District Court for the Middle District of Pennsylvania (April 22, 1996) . . . 22

Complaint and Notice of Hearing issued by the National Labor Relations Board (April 30, 1996) 23

Judgment of the United States Court of Appeals for the Third Circuit (July 1, 1997) 28

Opinion of the United States Court of Appeals for the Third Circuit (July 7, 1997) 29

Order Allowing Certiorari (Nov. 14, 1997) 30

RELEVANT DOCKET ENTRIES

I. THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

United Automobile, Aerospace and Agricultural Implement Workers of America v. Textron Lycoming Reciprocating Engine Div., AVCO Corp., No. 4-CV-95-1918

1. 11/16/95 COMPLAINT: Rescinding a collective bargaining agreement.

2. 1/26/96 MOTION by defendant to dismiss plaintiff's complaint.

3. 1/26/96 BRIEF by defendant in support of motion to dismiss plaintiff's complaint.

4. 2/16/96 BRIEF by plaintiff United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787 in opposition to motion to dismiss plaintiff's complaint.

5. 3/7/96 REPLY BRIEF by defendant Textron Lycoming Reciprocating Engine Division, AVCO Corp., in support of motion to dismiss plaintiff's complaint.

6. 3/15/96 MOTION by plaintiff to strike or alternatively for leave to file sur-reply brief.

7. 3/21/96 ORDER by Judge James F. McClure Jr. granting motion to dismiss plaintiff's complaint and dismissing the complaint.

8. 4/1/96 ORDER by Judge James F. McClure Jr. denying motion to strike or alternatively for leave to file sur-reply brief.

9. 4/22/96 NOTICE OF APPEAL by plaintiff, Aerospace and Agricultural Implement Workers of America, International Union and its local 787 from District Court order filed 3/21/96.

10. 9/4/97 MOTION by defendant Textron Lycoming, [AVCO Corp.] for continuance of all proceedings by this Court until the Supreme Court of the United States decides whether to grant certiorari.

11. 9/9/97 ORDER by Judge James F. McClure: granting defendant's motion for continuance of all proceedings by this Court until the Supreme Court of the United States decides whether to grant certiorari; all proceedings are stayed pending consideration by the U.S. Supreme Court of defendant's anticipated petition for a writ of certiorari.

II. THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United Automobile, Aerospace and Agricultural Implement Workers of America v. Textron Lycoming Reciprocating Engine Div., AVCO Corp., No. 96-7261

1. 5/1/96 CIVIL CASE DOCKETED. Notice filed by United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and Its Local 787.

2. 7/15/96 BRIEF on behalf of Appellant Local 787 filed.

3. 7/15/96 APPENDIX on behalf of Appellant Local 787 filed.

4. 8/12/96 BRIEF on behalf of Appellee Textron Lycoming filed.

5. 8/26/96 REPLY BRIEF on behalf of Appellant Local 787 filed.

6. 7/7/97 OPINION (Becker, authoring Judge, Roth Circuit Judges, Barry, District Judge, sitting by designation), filed.

7. 7/7/97 JUDGMENT. Reversed and the cause Remanded to the said District Court for further proceedings consistent with the Opinion of the Court. Costs against appellee.

8. 7/29/97 MANDATE ISSUED, filed.

III. THE SUPREME COURT OF THE UNITED STATES

Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. United Automobile, Aerospace and Agricultural Implement Workers of America, No. 97-463

1. 9/12/97 Petition for Certiorari filed.

2. 11/14/97 Certiorari granted.

AGREEMENT

Between Textron Lycoming and the International Union (UAW) and its Local Union 787 Williamsport, PA

April 1, 1994

* * *

AGREEMENT

This Agreement, made and entered into as of April 1, 1994, by and between Textron Lycoming Reciprocating Engine Division Avco Corporation a wholly owned Subsidiary of Textron Inc., 652 Oliver Street, Williamsport, Pennsylvania (hereinafter referred to as "Company") for the plants presently constituted and any additions thereto (but not any new plants) at Williamsport, Pennsylvania and the Airport at Montoursville, Pennsylvania and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Its Local 787 (hereinafter jointly referred to as "Union").

Witnesseth: That the parties hereto, in consideration of their mutual interest herein set forth, promise and do hereby agree:

ARTICLE I
RECOGNITION

Section 1. The Company recognizes the Union as the sole and exclusive bargaining agent for all production and maintenance employees, shop clerical employees, computer data entry clerks, tool designers and hourly Airport service employees, but excluding all other employees, including but without limitation plant protection employees, office clerical employees, engineers, metallurgists, draftsmen, time study men, personnel department employees, accounting and payroll clerks, purchasing department employees, technical employees, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

Section 2. The Company and the Union agree, that to the extent provided under applicable State and Federal laws and regulations, there will be no discrimination in hiring, training, promotions, lay-offs or return from lay-offs or discipline of employees because of race, color, creed, religion, age, sex, national origin, or handicap or because an employee or applicant is a disabled veteran or a Vietnam Era veteran.

Section 3.

(a) During the first sixty 60 days of employment, new employees shall be considered "probationary" employees and not eligible for company provided health care benefits. It is understood that the Company shall be sole judge of the requirements and qualifications of applicants for work and shall be the sole judge of the qualifications of such "probationary" employees for retention by the Company. The lay off and/or discharge of "probationary" employees shall not be subject to the grievance procedure.

(b) Probationary employees on layoff due to reduction of force or sick leave shall be reinstated or terminated as follows:

1. Probationary employees whose layoff time or sick leave did not exceed the actual active time worked, will be given credit for the actual time worked prior to their layoff or sick leave in computing their probationary period.

2. In establishing the seniority date of probationary employees whose lay-off time or sick leave did not exceed the actual time worked, the actual number of days worked will be counted back from the date of reinstatement and this date will become the official seniority date.

3. Probationary employees whose lay-off or sick leave exceeds the actual time worked by one (1) day or more, shall be terminated and if rehired will be considered new employees.

Section 4.

(a) Union Shop - All employees subject to the terms of this Agreement who have completed their probationary period at the date of the execution of this Agreement shall become and remain members in good standing in the Union as a condition of continued employment on and after the 30th day following the date of the execution of this Agreement.

(b) All employees subject to the terms of this Agreement shall be required to become members of the Union after they have completed their probationary period of employment, as defined in Article 1, Section 3, of this Agreement, or on and after the 30th day following the execution of this Agreement whichever is the later.

(c) The Company shall not be required to discharge any employee for failure to attain or to maintain membership in good standing in the Union unless it shall have received ten (10) days' written notice from the Union prior to the date such discharge is demanded by the Union. If the Company discharges any employee upon written demand by the Union, the Company shall not be required, except at its own election, to re-employ such employee, and if re-employed, such employee shall in all respects become a new employee.

(d) It is agreed that the Company will not be required to discharge an employee in any instance where it would result in a violation of the Labor-Management Relations Act of 1947, as amended.

(e) An employee who shall tender the initiation fees (if not already a member) and the periodic dues uniformly required as a condition of acquiring or retaining membership shall be deemed to meet this condition.

Section 5. Check-off - An employee who desires the regular monthly dues of the Union to be deducted from his pay by the Company and remitted to the proper Union Officer of the Union shall submit a fully executed Authorization Card for this purpose, said card to read as follows:

* * *

Section 6. The Union agrees to indemnify and save the company harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken or not taken by the Company in complying with the provisions of this Article I.

Section 7. Notwithstanding any other provision of the Pension Plan, the Trustee, upon authorization by the Joint Board of Administration, shall deduct Union dues from any monthly retirement benefit otherwise payable to any retired employee who shall have duly authorized such deduction on a form acceptable to the Company to the extent permitted by applicable federal and state laws and regulations; and to remit such dues to the Union.

* * *

ARTICLE III
GRIEVANCE PROCEDURE

Section 1. Grievances are defined as any alleged violation of the terms of this Agreement or differences of opinion as to its interpretation or application. Subject to the provisions of Section 7 of this Article III, grievances as defined herein, shall be settled promptly in the manner hereinafter set forth.

Step 1. A grievance, except one which is of a general or policy nature, must first be taken up orally with the Department Foreman by the Department Steward and the employee asserting the grievance. However, any individual employee or group of employees shall have the right to present grievances to the Company at any time. In the event of a settlement, a Union representative shall have the right to be present.

Step 2. If no satisfactory settlement of the grievance is reached in Step 1, the Steward will reduce it to writing in duplicate on a grievance form provided by the Company, and present it to the Department Foreman. No later than two working days following that on which the grievance was presented to the Foreman, a meeting shall be held for the

purpose of a full investigation of all facts concerned with the grievance. Those present at this meeting may include the Labor Relations Manager (or his designated representative), the Department Head, the Foreman, the aggrieved employee or employees, the area Steward, the Shop Chairman (or his designated representative), the area Committeeman, and any other individual or individuals who have knowledge or information which would be pertinent to the discussion and settlement of the grievance. Within two working days following the conclusion of this meeting, the Department Head will answer the grievance and return it to the area Committeeman. Failure to answer the grievance within the time limitation specified will automatically advance it to the next Step.

Step 3. If no satisfactory settlement of the grievance is reached in Step 2 above, the grievance shall be presented by the Shop Committee to the Labor Relations Manager (or his designated representative). The Labor Relations Manager (or his designated representative) shall meet with the Shop Committee once weekly at a designated time for the purpose of settling any grievances that may be referred to this Step. The International Representative of the Union may participate in these meetings. The Labor Relations Manager (or his designated representative) shall give a written disposition to all grievances presented at this meeting within five (5) working days after this meeting. Failure to do so will automatically move the grievance to the next Step.

Step 4. (a) In the event any grievance referred to Step 3 of the grievance procedure remains unsettled following discussion of the grievance in the Step 3 meeting, the Union may notify the Company in writing that the matter is submitted to arbitration. In order to be valid, such formal notice must be given within twenty-one (21) calendar days from the date a written answer is received from the Company in Step 3. Matters so referred to arbitration shall be submitted to an impartial arbitrator selected by the parties in the following manner: A representative of the Union and a representative of the Company will meet within ten (10) calendar days after the date formal notice

of referral is given in an effort to select a qualified arbitrator who will be mutually agreeable. In the event the parties are unable to agree upon an arbitrator within such ten (10) day period after notice of referral, the Union may request the American Arbitration Association ("AAA") to submit a panel of nine (9) impartial experienced arbitrators, from which each party shall strike the names of those individuals it does not accept and shall number the remaining names, if any, in the order of preference. Upon receipt of the preferences of the parties, the AAA shall thereupon appoint the individual selected by both parties who shall have the highest combined preference. If the AAA is unable to appoint an arbitrator acceptable to both parties from the first panel, an additional panel of nine (9) arbitrators, none of whom shall have appeared on the first panel, shall be submitted to the parties for their consideration. Upon receipt of such a second panel, the parties shall meet within ten (10) calendar days and shall strike names alternately, each party striking three (3) names. The individual whose name remains shall be designated the impartial arbitrator. In the event the parties shall fail to meet to strike names from such a second panel with twenty-one (21) calendar days, or within such additional period as shall be mutually agreed upon, the AAA shall appoint an arbitrator from the list. Failing timely notice of intent to arbitrate by the Union as above provided the grievance shall be considered settled on the basis of the Company's last disposition and shall not be subject to further appeal.

(b) The Arbitrator, when duly appointed or designated, shall proceed to consider the disputed grievance without delay and shall render his decision promptly following the conclusion of his taking of evidence in the matter.

(c) Once the date of the hearing has been set, neither party will request a postponement.

(d) The decision of the Arbitrator shall be final and binding. The jurisdiction of the Arbitrator shall be limited to the interpretation or application of the terms of this Agreement, or

any agreement made supplementary hereto, and he shall have no authority to add to, subtract from, or to change any of such terms, including the existing wage rates set forth in Exhibits attached hereto. No more than one (1) grievance shall be arbitrated by any one Arbitrator; provided however, that more than one grievance may be heard by an arbitrator where the parties can agree concerning the issues involved.

(e) The costs and expenses of arbitration, including the compensation of the Arbitrator, shall be borne by the party losing the case. If the decision is not clear cut, the Arbitrator shall decide which party shall be assessed the costs.

Section 2. Grievances of a general or policy nature may be initiated by the Union in Step 3 of the Grievance Procedure, and if no satisfactory answer is given in Step 3, the Union may refer the grievance through the balance of the Grievance Procedure, subject to the terms and conditions thereof.

Section 3. Minutes of the meetings provided for herein may be taken by either the Company or the Union

Section 4. Employees shall file grievances promptly. No grievances shall be valid unless submitted in writing within twenty (20) working days after the employee or the Union knew, or by reasonable diligence could have known, of the facts giving rise to the grievance. In no event will the Company be required to pay more than ten (10) days back pay prior to the time the grievance was called to the attention of a Company representative in writing by the individual employee or by a Union representative.

Section 5. A grievance, except one which is in Step 4, shall be considered abandoned, if not appealed to the next Step within seven (7) working days after receiving disposition.

Section 6. Time limits set forth in this Article may be extended upon approval of both parties.

Section 7. Production standard grievances shall be handled in the following manner:

(a) In the event of an asserted grievance by an employee concerning production standards, the Foreman will get the standards sheet and explain all aspects of the standard to the employee and/or the Union Steward in the area.

(b) In the event the job standard is still in dispute, the grievance shall be reduced to writing and shall enter the Grievance Procedure in the Second Step, at which time the Committeeman for the area concerned with the grievance and appropriate representatives of Management shall attempt to resolve the matter.

(c) In the event the dispute remains unsettled following efforts by the Committeeman and Company representatives, the matter shall be taken up at the next regular grievance meeting which may be attended by representation from the UAW staff. In the event that the grievance shall still remain unresolved, the Company shall afford access within a reasonable time to the affected operation by a staff time study expert of the International Union, UAW, upon request in writing within ten (10) calendar days after such regular grievance meeting. The union expert shall be permitted an opportunity to make a study during normal day shift hours at a time when the contested job is operating.

(d) Upon exhaustion of the above procedure, but in no event later than thirty (30) days (excluding scheduled working days on which the contested job is not operating) after the date of the Union's notice pursuant to subsection (c) of this Section of its desire to study the disputed job, any grievance concerning a production standard may be referred to arbitration as provided in Step 4 of the Grievance Procedure by writing notice to the Director of the AAA. The foregoing thirty (30) day period may be extended for an additional thirty (30) calendar days by the parties if the union expert is unable to schedule a visit within the first period.

* * *

ARTICLE XIX
PRODUCTION INTERFERENCE

Section 1.

(a) The Union agrees that there shall be no strikes, walkouts, sitdowns, production retardings, or other similar interruptions of, or interferences with, work during the term of this Agreement for any reason.

(b) The Company agrees that there shall be no lockouts against bargaining unit members during the term of this Agreement.

ARTICLE XX
OTHER AGREEMENTS

Section 1. Memorandums of Agreement

Several Memorandums of Agreement were negotiated as part of the parties Collective Bargaining Agreement, dated April 1, 1994, but have been omitted from the printed document due to their limited function and/or otherwise inclusion into other provisions of the Agreement. However, such agreements are available for review in either the Union's office or in the Company's Human Resources office and are referred to as follows: (1) Settlement Agreement; (2) "Job Classification Revisions" Agreement; (3) Attachment to Data Entry Clerk M.I.S. Agreement (4) Inactive Codes Agreement; and (5) "Grievances Reinstitution" Agreement.

Section 2. Past Practices

Past practices affecting wages, hours or other conditions of employment, which have been generally accepted by the parties and which are not in conflict with written agreements reached by the parties on or after the effective date of this Agreement, shall remain in effect.

Section 3. Settlement

This Agreement, together with those certain Memorandums of Agreement each of which has been executed between the Company and the Union simultaneously herewith and which are

incorporated into this Agreement, constitute the entire contract between the Company and the Union and settle all demands and issues with respect to all matters subject to collective bargaining. Therefore, the Company and the Union, for the duration of this Agreement, waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter which is subject to collective bargaining, whether or not such subject or matter is specifically referred to herein.

ARTICLE XXI
DURATION

Section 1. This Agreement shall become effective as of APRIL 1, 1994, except as otherwise indicated herein, and shall remain in effect up to and including APRIL 4, 1997, and shall automatically renew itself from year to year thereafter unless written notice to terminate or amend this Agreement is given by either party to the other at least sixty (60) days prior to APRIL 4, 1997 or prior to the date of expiration of any annual renewal hereof.

Section 2. If notice of termination shall be given, negotiations for a new agreement shall take place during the sixty (60) days prior to the expiration of this Agreement.

* * *

MEMORANDUM OF AGREEMENT
MAINTENANCE SUBCONTRACTING
February 1, 1994

A. If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the Maintenance employees of the Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house. This seven (7) day requirement shall not apply in case of a maintenance emergency; provided, however, that in such instance the

Company shall give the Union as much prior notice of contracting as is reasonable under the circumstances.

B. If work of a type normally performed by bargaining unit maintenance craftsmen is to be performed in the plant by a subcontractor's craftsmen on a Saturday, Sunday or holiday, the Company will call in an equal number of bargaining unit maintenance employees for each craft so utilized, and shall afford them an equivalent amount of work (not to exceed eight (8) hours on each such day). The bargaining unit employees who are called in shall perform any duties assigned by the Company, regardless of any contrary provisions of the current labor agreement, and shall not be restricted to the performance of maintenance work; provided, however, that they shall be paid at their appropriate maintenance craft rates for all work so performed.

In the event that no work shall be regularly scheduled by the Company in the Maintenance Department during all or any part of the period from 3:30 PM to 7:00 AM (herein called "the second and third shifts"), and work of a type defined above is to be performed in the plant by a subcontractor's craftsman during hours falling in whole or in part within the second and third shifts, the Company will call in an equal number of bargaining unit maintenance employees of like craft to work as above provided, it being understood that the bargaining unit craftsmen may be assigned such equivalent call-in work on any shift not then regularly scheduled for them on the day of call-in.

In the event the procedure as outlined in (A) above is not complied with, the following will apply:

In the event work of the type defined above is performed in the plant during the regular work week, the bargaining unit employees on the affected shift shall, in addition to their normal compensation, be compensated by the Company for the hours worked by the contractor's employees during their shift at the appropriate straight-time rates. The Company's monetary liability under this paragraph shall be limited to the total number of hours worked by the contractor's employees.

* * *

MEMORANDUM OF AGREEMENT

PRODUCTION SUBCONTRACTING

February 2, 1994

If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the Production employees of the Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house. This seven (7) day requirement shall not apply when production emergencies require contracting on shorter notice; provided, however, that in such instance the Company shall give the Union as much prior notice of contracting as is reasonable under the circumstances.

* * *

[Filed Nov. 16, 1995]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT, PENNSYLVANIA
WILLIAMSPORT DIVISION

UNITED AUTOMOBILE,
AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,
AND ITS LOCAL 787
Plaintiff,
v.

Civil Action No.
Jury Demanded

TEXTRON LYCOMING
RECIPROCATING ENGINE
DIVISION, AVCO CORP.
Defendant.

COMPLAINT

The plaintiff brings this suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. 185 et seq. Plaintiff complains as follows:

1. Plaintiff, the United Automobile, Aerospace and Agricultural Implement Workers of America, and its Local 787 (hereinafter the "UAW") is a labor organization which is the exclusive bargaining representative of the employees at Defendant's facilities in Williamsport, Pennsylvania. Plaintiff is a labor organization which represents employees defined by Section 2(5) of the National Labor Relations Act, 29 U.S.C. 152(5).

2. Defendant Textron Lycoming Reciprocating Engine Division, Avco Corporation, (hereinafter "Textron") is a wholly owned subsidiary of Textron, Inc. Defendant Textron makes aircraft engines at a factory and other facilities located in and around Williamsport, Pennsylvania. Defendant employs about 500 employees in the bargaining unit represented by Plaintiff at

these facilities. Defendant Textron is an employer engaged in commerce as defined by Section 2(2) of the National Labor Relations Act, 29 U.S.C 152(2).

3. Plaintiff and Defendant are parties to a collective bargaining agreement, which by its terms, covers the period from April 1, 1994 to April 4, 1997. This agreement is attached hereto as Exhibit "A".

4. This court has jurisdiction of this case pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391(b).

5. Prior to entering into collective bargaining for the 1994-97 contract, the UAW demanded information from Textron in order to carry out its collective bargaining duties. On October 28, 1993, the UAW demanded that the Company disclose information regarding work "which the Company currently plans to move or subcontract or is considering moving or subcontracting" and "for all written reports, memoranda, projections and feasibility studies concerning any contemplated movement of work from UAW represented locations during the period 1994-1997".

6. On December 8, 1993 and on December 29, 1993, the Union repeated its request for information related to any plans to move work from its bargaining unit.

7. At no time prior to the beginning of negotiations for the 1994-97 collective bargaining agreement did Defendant Textron disclose any information regarding any plans to move bargaining unit work for the upcoming contract period.

8. When negotiations began on January 6, 1994, UAW negotiators specifically inquired whether Defendant Textron had any plans to move bargaining unit work during the upcoming three year period.

9. At the negotiations session on January 6, 1994, Frank Ratchford, the Vice-President of Human Resources of Defendant Textron, stated that he knew of no plans to move bargaining unit

work. Ratchford also promised to check to ensure that his knowledge was correct.

10. Neither Ratchford nor any other company official ever raised the issue of the possibility of the movement of bargaining unit work again during negotiations. Negotiations for the new contract took place between January and the end of March, 1994.

11. Unknown to the UAW, Defendant Textron was formulating a secret plan to subcontract a substantial part of the Company's parts production operations at the time negotiations for the contract were occurring. The formulation of this secret plan was complete before the parties completed negotiations. Implementation of this plan to subcontract parts production could result in the layoff of about one-half of the employees represented by the UAW at the Williamsport plant.

12. Defendant Textron never disclosed its plan to subcontract parts production to the to the UAW during the negotiations for the 1994-97 contract.

13. In reliance upon the representations of Defendant's representatives, the UAW did not raise issues or make any contract demands related to the movement or subcontracting of bargaining unit work during the negotiations over the new contract. Additionally, based upon the representations of Defendant's representatives, the UAW did not pursue its unanswered request for information on the subject.

14. The UAW's reliance on Defendant's representations in January 1994 that no subcontracting or movement of work was contemplated and on Defendant's later silence on the issue was reasonable.

15. After the UAW agreed to and ratified a three year collective bargaining agreement in April 1994, the Board of Directors of Textron formally adopted the secret plan to subcontract parts production that had always been performed by UAW members. This plan was announced to the Union and to its members on June 2, 1994. At the time of the announcement, Defendant Textron informed its employees that about one-half of them would

lose their jobs when the subcontracting plan was fully implemented.

16. In reliance upon the material misrepresentations and concealments of Defendant Textron, the UAW agreed to a collective bargaining agreement that it would have not otherwise agreed to. The collective bargaining agreement, therefore, is voidable at the option of the UAW.

Wherefore, Plaintiff UAW requests that this court grant the following relief:

a) that it render a declaratory judgment that the existing collective bargaining agreement between the parties is voidable at the option of Plaintiff UAW;

b) that it award compensatory and punitive damages to the Union and to its members to compensate them for the harm caused by the Defendant's misrepresentations and concealments and to deter other Employers from similar conduct;

c) that it award costs and reasonable attorneys fees to the plaintiff for bringing this cause of action.

d) that it take such other action that it deems equitable and just.

Respectfully submitted,

/s/ Stephen A. Yokich
Stephen A. Yokich
Associate General Counsel
UAW
1757 "N" Street, N.W.
Washington, D.C. 20036
202-828-8500

/s/ Jordan Rossen
Jordan Rossen, General Counsel
UAW
8000 East Jefferson Ave.
Detroit, Michigan 48214
313-926-5216

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38 (b), the Plaintiff hereby requests a jury trial in this matter.

/s/ Stephen A. Yokich
Stephen A. Yokich
Attorney for Plaintiff
UAW
1757 "N" Street, N.W.
Washington, D.C. 20036
202-828-8500

/s/ Jordan Rossen
Jordan Rossen
General Counsel
UAW
8000 East Jefferson Ave.
Detroit, Michigan 48214
313-926-5216

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL 787,
Plaintiff,
v.
TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Defendant.

No. 4:CV-95-1918
Judge McClure

ORDER

Entered March 21, 1996

(Found in the Appendix to the Petition for Certiorari at 14a-18a)

[Filed April 22, 1996]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT, PENNSYLVANIA
WILLIAMSPORT DIVISION

UNITED AUTOMOBILE,
AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,
AND ITS LOCAL 787,
Plaintiff,

v.

TEXTRON LYCOMING
RECIPROCATING ENGINE
DIVISION, AVCO CORP.,
Defendant.

CASE NO.
4:CV-95-1918
Hon. James F. McClure

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787 hereby appeal to the United States Court of Appeals for the Third Circuit from the decision of the Honorable James McClure, granting Defendant's Motion to Dismiss entered in this action on March 21, 1996.

/s/ Stephen A. Yokich
Stephen A. Yokich
Attorney for Plaintiff
Associate General Counsel
UAW, International Union
1757 "N" Street, N.W.
Washington, D.C. 20036

[Filed April 30, 1996]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

TEXTRON LYCOMING RECIPROCATING
ENGINE DIVISION/SUBSIDIARY
OF TEXTRON INC.

and Case 4-CA-23285

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, (UAW) AND ITS LOCAL 787

COMPLAINT AND NOTICE OF HEARING

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) and its Local 787, herein called the UAW and the Local, respectively, and herein also collectively called the Union, has charged that Textron Lycoming Reciprocating Engine Division/Subsidiary of Textron Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151, *et seq.*, herein called the Act. Based thereon, the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in this proceeding was filed by the Union on November 22, 1994, and a copy was served by certified mail on Respondent on November 23, 1994.

(b) The first amended charge in this proceeding was filed by the Union on June 12, 1995, and a copy was served by certified mail on Respondent on June 13, 1995.

2. (a) At all material times, Respondent, a Delaware corporation with a facility in Williamsport, Pennsylvania, herein called the Facility, has been engaged in the manufacture of aircraft engines.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), purchased and received goods and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) At all material times, the UAW has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, the Local has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, tool designers, hourly Airport Service employees, and also shop clerical employees covered by the NLRB Certificate, dated June 11, 1952, in Case No 4-RC-1424, but excluding plant protection employees, clerical and office employees, engineers, metallurgists, draftsmen, time study men, personnel department employees, accounting and payroll clerks, purchasing department employees, technical employees and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

(b) On or about March 28, 1994, Respondent and the Union entered into a collective bargaining agreement (herein called the Agreement) effective by its terms from April 1, 1994

through April 4, 1997, pursuant to which Respondent has recognized the Union as the exclusive collective bargaining representative of the Unit.

(c) As part of the Agreement, the Union retained a memorandum of agreement which grants Respondent certain rights to subcontract Unit work.

(d) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

5. At various times from on or about January 6, 1994, to on or about March 28, 1994, Respondent and the Union met for the purposes of collective bargaining with respect to the wages, hours, and other terms and conditions of employment of the Unit to be embodied in the Agreement.

6. (a) On or about October 28, 1993, the Union, by letter, requested Respondent to furnish the Union with all written reports, memoranda, projections and feasibility studies concerning any contemplated subcontracting during the period 1994-1997.

(b) On or about January 6, 1994, the Union, in a bargaining session, made an oral request for anything "on paper" regarding Respondent's future subcontracting plans.

(c) The information requested by the Union, as described above in subparagraphs (a) and (b), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.

(d) Since at least February 25, 1994, until June 1995, a more precise date being presently unknown to the General Counsel, Respondent: (i) failed and refused to furnish the Union with the information requested by it as described above in subparagraphs (a) and (b); (ii) withheld from the Union a document known as a "Restructure Review"; and (iii) failed to apprise the Union of its plans to subcontract substantial unit work, thereby inducing the Union to agree to retain the subcontracting language referred to above in paragraph 4(c).

(e) By its conduct described above in subparagraph (d), Respondent failed and refused to bargain in good faith with the Union as the exclusive collective bargaining representative of the Unit.

7. (a) On or about June 2, 1994, Respondent announced that it intended to subcontract the manufacturing of all engine parts.

(b) On or about June 13, 1994, Respondent announced that it intended to subcontract all Unit work in nine named departments.

(c) The subjects set forth in subparagraphs (a) and (b), relate to wages, hours, and other terms and conditions of employment of the Unit, and are mandatory subjects for the purposes of collective bargaining.

(d) Respondent engaged in the conduct described above in subparagraphs (a) and (b), without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

8. By the conduct described above in paragraphs 6(d) and 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representatives of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraphs 6, 7 and 8, the General Counsel seeks an order requiring Respondent to: (1) bargain about its decisions to subcontract Unit work; (2) refrain from enforcing the fraudulently procured subcontracting clause referred to above in paragraph 4(c); (3) upon the Union's demand, bargain to agreement or good faith impasse about a contractual subcontracting clause; and (4) make the Unit employees whole for any lost wages or benefits they suffered as a result of Respondent's implementation of its subcontracting decisions.

PLEASE TAKE NOTICE that commencing at 11:00 a.m. on the 21st day of October, 1996, and on consecutive days thereafter, a hearing will be conducted in a hearing room of the National Labor Relations Board, Fourth Region, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania, before an Administrative Law Judge of the Board on the allegations in this Complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony.

The Respondent is further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an answer to this Complaint within 14 days from service of it, and that unless Respondent does so, all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board. The Respondent is also notified that pursuant to the Board's Rules and Regulations, the Respondent shall serve a copy of its answer on each of the other parties.

Form NLRB-4338, Notice, and Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, are attached.

Dated at Philadelphia, Pennsylvania this 30th day of April, 1996:

/s/ Peter W. Hirsch
PETER W. HIRSCH
Regional Director, Fourth Region
National Labor Relations Board

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
INTERNATIONAL UNION AND ITS LOCAL 787,
Appellant,
v.

TEXTRON LYCOMING RECIPROCATING ENGINE
DIVISION, AVCO CORP.,
Appellee.

No. 96-7261

JUDGMENT

Entered on July 1, 1997

(Found in the Appendix to the Petition for Certiorari at 19a-20a)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
INTERNATIONAL UNION AND ITS LOCAL 787,
Appellant,

v.

TEXTRON LYCOMING RECIPROCATING ENGINE
DIVISION, AVCO CORP.,
Appellee.

No. 96-7261

OPINION OF THE COURT

Decided July 1, 1997

(Found in the Appendix to the Petition for Certiorari at 1a-13a)

SUPREME COURT OF THE UNITED STATES

No. 97-463

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787

ORDER ALLOWING CERTIORARI

Filed November 14, 1997

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 29, 1997. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 28, 1998. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 18, 1998. Rule 29.2 does not apply.

November 14, 1997

Supreme Court, U.S.
FILED
DEC 29 1997
CLERK

(5)

No. 97-463

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR PETITIONER

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Counsel for Petitioner

50 pp

QUESTION PRESENTED

Whether Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, which confers federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization," permits a union to sue in federal court to declare a collective bargaining agreement voidable in the absence of any alleged violation of the agreement?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before the United States Court of Appeals for the Third Circuit were the AVCO Corporation and the United Automobile, Aerospace and Agricultural Implement Workers of America, International Union and its Local 787.*

Pursuant to Supreme Court Rule 29.6, petitioner AVCO Corporation states that it is a wholly-owned subsidiary of Textron, Inc. All of AVCO Corporation's subsidiaries are wholly-owned.

---

*The complaint named the defendant as Textron Lycoming Reciprocating Engine Division, AVCO Corporation. Because Textron Lycoming is an unincorporated division of the AVCO Corporation, the actual defendant in this case is the AVCO Corporation. *See, e.g.*, T. Bjur & C. Slezak, *Fletcher Cyclopedia of the Law of Private Corporations* § 4473, at 78 (rev. ed. 1992).

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 1

STATEMENT 2

SUMMARY OF ARGUMENT 8

ARGUMENT 10

I. SECTION 301 WAS ENACTED FOR THE IMPORTANT, BUT LIMITED, PURPOSE OF REDRESSING VIOLATIONS OF COLLECTIVE BARGAINING AGREEMENTS 10

A. Congress Enacted The National Labor Relations Act To Promote The Collective Bargaining Process And To Centralize Regulation Of That Process In The National Labor Relations Board 11

B. Section 301 Was Enacted To Ensure That Collective Bargaining Agreements Could Be Enforced And That Violations Of Those Agreements Would Be Redressed In A Manner Consistent With Federal Labor Policy 15

II. THE UNION'S CLAIM DOES NOT FALL WITHIN THE LIMITED SCOPE OF SECTION 301 20

A. The Plan Language of Section 301(a) Grants Federal Jurisdiction Only Over Suits That Allege The Violation Of A Collective Bargaining Agreement 20

TABLE OF CONTENTS
(Continued)

Page

B. The Legislative History Confirms The Limited Scope Of Section 301(a) 23

C. Extending Federal Jurisdiction Beyond The Limits Of The Plain Language Of Section 301(a) Would Bring The Federal Courts Into Unnecessary And Unjustified Conflict With The Labor Board 26

D. The Union Here Does Not Allege Any Violation Of A Collective Bargaining Agreement 31

III. IN ANY EVENT, SECTION 301(a) DOES NOT PERMIT THIS SUIT, WHICH IS IN ESSENCE A TORT CLAIM FOR FRAUD 34

CONCLUSION 39

TABLE OF AUTHORITIES

Page

Cases

A.T. Massey Coal Co., Inc. v. International Union, United Mine Workers, 799 F.2d 142 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987) 23

Allis-Chalmers Corp. v. Lareck, 471 U.S. 202 (1985) 35

Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) . . . . . *passim*

Architectural Fiberglass, 165 NLRB 238 (1967) 33

Ardestani v. INS, 502 U.S. 129 (1991) 22

AT&T Technologies, Inc. v. Communications Workers, 475 U.S. 643 (1986) 17

Bread Political Action Comm. v. FEC, 455 U.S. 577 (1982) 22

Brown v. Gardner, 513 U.S. 115 (1994) 22

Cheng Fan Kwok v. INS, 392 U.S. 206 (1968) 22

Commissioner of Internal Revenue v. Schleier, 515 U.S. 323 (1995) 30, 36

Communication Workers v. Beck, 487 U.S. 735 (1988) 19, 35

Connecticut National Bank v. Germain, 503 U.S. 249 (1992) 21, 22

Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 22

Corvallis Sand & Gravel Co. v. Hoisting Portable Engineers, 419 P.2d 38 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967) 23

Demarest v. Manspeaker, 498 U.S. 184 (1991) 22

Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) . . . . *passim*

Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964) 34

First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981) 34

Garcia v. United States, 469 U.S. 70 (1984) 22

TABLE OF AUTHORITIES
(Continued)

Page

Garner v. Teamsters Local Union No. 776, 346 U.S. 485 (1953) 13, 14
Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974) 27
Good Samaritan Hospital v. Shalala, 508 U.S. 402 (1993) 22
H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970) 3, 14, 27
Hernandez v. National Packing Co., 455 F.2d 1252 (1st Cir. 1972) 23
Heussner v. National Gypsum Co., 887 F.2d 672 (6th Cir. 1989) 23
Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) 19, 28, 37
International Brotherhood of Electrical Workers v. Sign-Craft, Inc., 864 F.2d 499 (7th Cir. 1988) 23
International Longshoremen's Ass'n v. Davis, 476 U.S. 380 (1986) 14
Kaiser Steel Corp. v. Mullins, 455 U.S. 72 (1982) 19
Kokken v. Guardian Life Insurance Co., 511 U.S. 375 (1994) 22
Kolentus v. AVCO Corp., 798 F.2d 949 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987) 33, 36
Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399 (1988) 27
Livadas v. Bradshaw, 512 U.S. 107 (1994) 35
Local 100, United Association of Journeymen & Apprentices v. Borden, 373 U.S. 690 (1963) 35
Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962) 18, 19, 28
McNally Pittsburgh, Inc. v. International Association of Iron Workers, 812 F.2d 615 (10th Cir. 1987). 23
Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724 (1985) 27

TABLE OF AUTHORITIES
(Continued)

Page

Metropolitan Stevedore Co. v. Rambo, 515 U.S. 291 (1995) 22
Moskal v. United States, 498 U.S. 103 (1990) 20
National Licorice Co. v. NLRB, 309 U.S. 350 (1940) . . 6, 30
NLRB v. Acme Industrial Co., 385 U.S. 432 (1967) . . 33, 36
NLRB v. C&C Plywood, 385 U.S. 421 (1967) 17, 18
NLRB v. J.H. Rutter-Rex Manufacturing Co., 396 U.S. 258 (1969) 6, 29
NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) 11
NLRB v. Seven-Up Bottling Co., 344 U.S. 344 (1953) 13
NLRB v. Strong Roofing & Insulating Co., 393 U.S. 357 (1969) 15
Palmore v. United States, 411 U.S. 389 (1973) 22
Parker v. Connors Steel Co., 855 F.2d 1510 (11th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989) 33, 36
Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965) 7
Retail Clerks International Association, Local Unions Nos. 128 & 663 v. Lion Dry Goods, Inc., 369 U.S. 17 (1962) 30, 31
Roehm v. Horst, 178 U.S. 1 (1899) 32
Rozay's Transfer v. Local Freight Drivers, Local 208, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) 23
Rubin v. United States, 449 U.S. 424 (1981) 22
San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) . . . . . *passim*
Sears, Roebuck & Co. v. San Diego District Council of Carpenters, 436 U.S. 180 (1978) 11, 13
Serrano v. Jones & Laughlin Steel Co., 790 F.2d 1279 (6th Cir. 1986) 33, 36
Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962), *overruled on other grounds, Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) 19

TABLE OF AUTHORITIES
(Continued)

Page

Skelly Oil Co. v. Philips Petroleum Co., 339 U.S. 667 (1950) 32
Smith v. Evening News Ass'n, 371 U.S. 195 (1962) 19, 37, 38
Steelworkers v. Rawson, 495 U.S. 362 (1990) 35
Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) . . . . . *passim*
United Paperworkers International Union v. Misco, Inc., 484 U.S. 29 (1987) 27
United States v. Ron Pair Enterprises, Inc., 489 U.S. 235 (1989) 22
United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 27
United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 14, 15, 27
Utah Junk Co. v. Porter, 328 U.S. 39 (1946) 22
Vegelahn v. Gunter, 44 N.E. 1077 (Mass. 1896) 12
Walters v. Metropolitan Educational Enterprises, Inc., 117 S. Ct. 660 (1997) 21
Waymouth Farms, Inc., Nos. 18-CA-12766 and 12891, 1997 WL 693024 (NLRB Oct. 31, 1997) 30
West Virginia University Hospitals Inc. v. Casey, 499 U.S. 83 (1991) 21
William E. Arnold Co. v. Carpenters District Council, 417 U.S. 12 (1974) 17, 19
Wisconsin Department of Industry v. Gould Inc., 475 U.S. 282 (1986) 30, 33

Statutes

28 U.S.C. § 1254(1) 1
28 U.S.C. § 1291 7

TABLE OF AUTHORITIES
(Continued)

Page

Labor-Management Relations Act, 29 U.S.C.
§ 151 *et seq.* 1, 9
29 U.S.C. § 151 . . . . . 11, 15
29 U.S.C. § 157 11
29 U.S.C. § 158 . . . . . *passim*
29 U.S.C. § 160 . . . . . 12, 13
29 U.S.C. § 161 12
29 U.S.C. § 185 . . . . . *passim*

Legislative History

92 Cong. Rec. 5412 (1946) 25
92 Cong. Rec. 5930 (1946) 24
93 Cong. Rec. 3614 (1947) 24
93 Cong. Rec. 3656 (1947) 32
93 Cong. Rec. 5014 (1947) 16
H.R. 4908, 79th Cong., 2d Sess., § 10 (1946), *reprinted in Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) 24
H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess (1947), *reprinted in I Legislative History of the Labor-Management Relations Act, 1947*, 505 (1959) 17
S. 1126, 80th Cong., 1st Sess (1947), *reprinted in I Legislative History of the Labor-Management Relations Act, 1947*, 99 (1959) 17, 24
S. Rep. No. 105, 80th Cong., 1st Sess (1947), *reprinted in I Legislative History of the Labor-Management Relations Act, 1947*, 407 (1959) 16, 17, 25
S. Rep. No. 1177, 79th Cong., 2d Sess. (1946), *reprinted in Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) 25

TABLE OF AUTHORITIES
(Continued)

Page

Miscellaneous Authorities

American Arbitration Association, *Case Reports Provide Profile of Labor Arbitration Case*, Study Time, No. 4, 1989 27

T. Bjur & C. Slezak, *Fletcher Cyclopedia of the Law of Private Corporations* § 4473 (rev. ed. 1992) ii

BNA, *Basic Patterns in Union Contracts* (14th ed. 1995) . . 5

Dunau, *Contractual Prohibition of Unfair Labor Practices: Jurisdictional Problems*, 57 Colum. L. Rev. 52 (1957) 28

Federal Mediation and Conciliation Service, *Forty-Eight Annual Report* (1995) 27

F. Frankfurter & N. Greene, *The Labor Injunction* (1930) 12

R. Gorman, *Basic Text on Federal Labor Law* (1976) 10, 11, 16

W. Gould, *A Primer on American Labor Law* (3d ed. 1993) 12

1 P. Hardin, *The Developing Labor Law* (3d ed. 1992) 11, 12, 19

Meltzer, *The Supreme Court, Congress, and State Jurisdiction Over Labor Relations*, 59 Colum. L. Rev. 269 (1959) 29

H. Millis & E. Brown, *From the Wagner Act to the Taft-Hartley* (1950) 12, 15

2 *Moore's Federal Practice* § 12.30[4] (3d ed. 1997) 2

Research Committee of the National Academy of Arbitrators, *Labor Arbitration in America: the Profession and Practice* (1992) 27

Restatement (Second) of Contracts § 164 (1981) 33, 35

Restatement (Second) of Contracts § 250 (1981) 32

Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. 529 (1963) 26, 28, 29

BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 1a) is reported at 117 F.3d 119. The order of the United States District Court for the Middle District of Pennsylvania (Pet. App. 14a), which contains the district court's opinion dismissing the complaint in this case, is unreported.

JURISDICTION

The Third Circuit entered its opinion on July 7, 1997. Judgment (Pet. App. 19a) was entered on July 29, 1997. The petition for certiorari was filed on September 12, 1997 and granted on November 14, 1997 (J.A. 30). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 301(a) of the Labor-Management Relations Act of 1947 provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). Section 301 is reprinted in its entirety at Pet. App. 21a.

Section 8(a) of the National Labor Relations Act (NLRA) provides in pertinent part:

> It shall be an unfair labor practice for an employer —
>
> * * *

> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Id. § 158(a).

Section 8(d) provides in pertinent part:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Id. § 158(d).

STATEMENT[1]

Congress has enacted a "complex and interrelated federal scheme of law, remedy, and administration" to regulate labor relations in this country and entrusted a "specific and specially constituted tribunal," the National Labor Relations Board, with primary authority for developing and enforcing this system. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242-43 (1959). Recognizing the strong congressional desire for "uniform application" of federal labor law, this Court has held that wherever conduct that arguably constitutes an unfair labor practice is at issue, "the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." *Id.* at 245.

---

[1] Because the district court dismissed the complaint for lack of subject matter jurisdiction based upon a facial challenge, this statement treats the facts alleged in the complaint as true. *See, e.g.*, 2 *Moore's Federal Practice* § 12.30[4], at 12-38 (3d ed. 1997).

While the Board's primary function is to "supervise the collective-bargaining process," *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970), it has no authority to enforce the substantive terms of collective bargaining agreements. *See, e.g.*, *Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-11 (1962). In the area of contract enforcement, Congress carved out a limited exception to the Board's authority and "ma[d]e collective bargaining agreements enforceable only in the courts." *Id.* at 511. Accordingly, Section 301(a) of the Taft-Hartley or Labor-Management Relations Act of 1947 grants federal courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. § 185(a).

This case presents an important question: whether Section 301 confers jurisdiction where no contractual violation is alleged but "disputes of a contractual nature" relating to the negotiation of a collective bargaining agreement are present. The decision below — which permits suits under Section 301 where no contractual violation is alleged — creates a new area of overlapping jurisdiction between the federal courts and the Board, thereby increasing the potential for conflict and frustrating significant congressional policies.

Background — Petitioner manufactures airplane engines at a plant in Williamsport, Pennsylvania. J.A. 16. Respondent, Local 787 of the United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW" or "union"), represents approximately 500 employees at that plant. J.A. 16. In 1993, before formal negotiations over a new collective bargaining agreement began, respondent union requested any written reports, projections, or other documents concerning petitioners' future subcontracting plans. J.A. 17. When formal negotiations began in January of 1994, the union renewed that request. J.A. 17. Although petitioner allegedly did not supply

any information concerning subcontracting,[2] the union did not pursue this request nor did it otherwise raise the issue of subcontracting during the negotiations over the collective bargaining agreement. J.A. 17-18.

As a result of these negotiations, the parties agreed to continue in force a prior memorandum agreement concerning the subcontracting of production work. J.A. 14-15. That memorandum recognized petitioner's right to subcontract and required only that it provide seven days notice of any subcontracting:

> If for general business reasons or because of the nature of the work, the Company desires to contract out work normally and historically performed by the Production employees of the Production and Maintenance Unit, the Union will be advised of such potential contract seven (7) working days prior to contracting out of the work. This seven (7) day period will provide an opportunity for the Union and the Company to discuss and look for alternative action to maintain said work in house.

J.A. 15. The new collective bargaining agreement, which incorporated the production subcontracting memorandum, was signed on April 1, 1994 and expired on April 4, 1997. JA 13.[3]

---

[2] A factual dispute exists on this issue. In a submission to the NLRB on November 10, 1995 in connection with charges brought by the union, *see infra* p. 5, Textron Lycoming provided a letter sent to the union in December 1993. In that letter, Textron Lycoming disclosed that it was currently considering outsourcing six categories of parts and that in the years ahead "every aspect of the manufacturing process will be examined to determine make or buy decisions." Letter from Frank X. Ratchford to Robert T. McHugh, Dec. 16, 1993, at 2, attached as Ex. A to Letter from Don A. Banta to Joseph Cionzynski, Nov. 10, 1995.

[3] Although the Agreement expired on April 4, 1997, J.A. 13, the expiration of the Agreement has not eliminated the dispute between the parties.

Like most such agreements, the Textron Lycoming-UAW collective bargaining agreement contained both a grievance procedure culminating in binding arbitration and a no-strike clause. J.A. 7-12; *see generally* BNA, *Basic Patterns in Union Contracts*, 37, 91 (14th ed. 1995) (noting that 99% of sampled union contracts contain arbitration clauses and 94% contain no-strike pledges). The grievance procedure had four steps beginning with informal consultation with a company foreman and a union steward and progressing eventually, when necessary, to a "final and binding" arbitration before an arbitrator from the American Arbitration Association. J.A. 7-10. In the no-strike clause, the union "agree[d] that there shall be no strikes, walkouts, sitdowns, production retardings, or other similar interruptions of, or interference with, work during the term of this Agreement, for any reason." J.A. 12. Petitioner similarly agreed that there would be no lockouts against union members during the term of the agreement. J.A. 12.

In June 1994, pursuant to the production subcontracting memorandum agreement, petitioner announced that it was planning to subcontract out the manufacturing of engine parts formerly produced at its Williamsport plant. J.A. 18. Petitioner informed the union that, when this decision was fully implemented, it estimated that approximately half of the employees represented by the union would be laid off. J.A. 18-19.

The Unfair Labor Practice Charges — In November 1994, the union filed an unfair labor practice charge with the National Labor Relations Board under Section 8 of the NLRA, which makes it is an unfair labor practice to "refuse to bargain collectively" or to fail to "confer in good faith." 29 U.S.C. § 158(a) & (d). In that charge, the union alleged that Textron Lycoming had failed to disclose information concerning subcontracting of "bargaining unit work." Charge, *Textron Lycoming Reciprocating Engine Division*, Case No. 4-CA-23285 (NLRB Nov. 22, 1994), and in a later amendment, the union sought a "declaration that the existing collective bargaining agreement is voidable at its option." Amended Charge, *Textron*

Lycoming Reciprocating Engine Division, Case No. 4-CA-23285 (NLRB Oct. 3, 1995) (Attachment A). The Board has the authority to void contracts in unfair labor practice cases arising out of the bargaining process and to "make whole" employees by awarding backpay and other relief. *See, e.g., NLRB v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263 (1969); *National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940).

One of the union's apparent goals in filing these charges was to void the collective bargaining agreement so that it could engage in, or, at least, threaten to engage in, a strike otherwise barred by the no-strike clause in the agreement. Although the Board alleged that the subcontracting clause was "fraudulently procured" as a result of Textron Lycoming's failure to disclose information about "contemplated subcontracting," J.A. 25-26, it did not seek to void the collective bargaining agreement. Instead, the Board sought an order preventing petitioner from enforcing the subcontracting memorandum and requiring it to bargain in good faith about subcontracting. J.A. 26. Textron Lycoming and the Board have reached a tentative settlement agreement on this complaint,[4] which is currently the subject of an administrative appeal by the union.

The Proceedings Below — On November 16, 1995, one year after filing unfair labor practice charges with the Board, the union filed a complaint in the United States District Court for the Middle District of Pennsylvania seeking nearly identical relief on nearly identical grounds.

In the complaint, which asserted federal jurisdiction under Section 301, the union requested compensatory damages, punitive damages, and a declaration "that the existing collective bargaining agreement between the parties is voidable at the option of the [union]." J.A. 17, 19. The union alleged that in negotiating the 1994 agreement, it demanded documents concerning the

[4] *See* letter from Francis W. Hoeber to Robert T. McHugh, May 17, 1997 (transmitting proposed settlement agreement).

company's plans to move or subcontract out bargaining unit work. J.A. 17. According to the union, an agent of petitioner represented in January 1994 that he knew of no plans to subcontract out bargaining unit work, promised to ensure that his knowledge was correct, and then never raised the issue again. J.A. 17-18. The union also alleged that during the negotiations which ended sometime in March 1994, petitioner was formulating a secret plan to subcontract out bargaining unit work. J.A. 18.

The union asserted that, if it had known about this plan, it would have made specific demands relating to subcontracting and that it would not have agreed to the agreement's no-strike clause. J.A. 18-19. Indeed, the union conceded before the district court that it was seeking to have the collective bargaining agreement declared voidable in order to credibly threaten to strike. Pl. Surreply at 2. Significantly, the complaint did not allege that petitioner or the union had violated the collective bargaining agreement.

The district court dismissed the complaint for lack of subject matter jurisdiction. Pet. App. 17a-18a. The court ruled that Section 301(a) grants federal courts jurisdiction only over "[s]uits for *violation* of contracts between an employer and a labor organization" and that the union's claim was based on conduct during the negotiation of a collective bargaining agreement, not any violation of an agreement. Pet. App. 17a (emphasis added). The district court also found that the union was in essence claiming that petitioner "negotiated in bad faith, a matter within the exclusive jurisdiction of the NLRB." Pet. App. 18a.[5]

Respondents appealed pursuant to 28 U.S.C. § 1291, and the Third Circuit reversed. While it recognized that the First, Fourth

[5] Because the district court found no subject matter jurisdiction over this case, it did not reach Textron Lycoming's alternative argument that the complaint should be dismissed for failure to invoke the collective bargaining agreement's grievance and arbitration procedures. Pet. App. 4a; *see generally Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53 (1965).

and Seventh Circuits have found that jurisdiction under Section 301(a) is limited to suits alleging violations of a collective bargaining agreement and that no such violation was alleged in this case, the Third Circuit nonetheless held that there was jurisdiction over the union's claim under Section 301(a). Pet. App. 7a-11a. Largely ignoring the language of the statute, the court based its jurisdictional holding on the supposed purpose of Section 301(a). According to the Third Circuit, "by enacting § 301(a) Congress intended that courts resolve disputes of a contractual nature, including disputes over [a collective bargaining] agreement's very existence." Pet. App. 9a-10a. Since a dispute over whether an agreement was secured by fraudulent inducement "goes to the heart of the enforceability of the collective bargaining agreement between the parties," Pet. App. 12a, the court concluded that the union's suit was of a contractual nature and that Section 301(a) confers jurisdiction over it. Pet. App. 9a-11a.

The decision below found this conclusion buttressed by the fact that the union could have raised fraudulent inducement as a defense had a violation of the agreement occurred and Textron Lycoming sued to enforce the collective bargaining agreement. Pet. App. 12a.

SUMMARY OF ARGUMENT

1. This case is governed by the plain language of Section 301(a) of the National Labor Relations Act, 29 U.S.C. § 185(a). That language is simple and straightforward: it authorizes the federal courts to hear "[s]uits for violation of contracts between an employer and a labor organization" such as collective bargaining agreements. It does not confer jurisdiction over suits that do not allege violation of a collective bargaining agreement or other covered contract. Since the union does not allege the violation of the agreement here, Section 301(a) is plainly inapplicable.

Any other conclusion would render the statute's words of limitation — "for violation" — meaningless. It is, however, well-settled that statutes must be interpreted so as to give each word

operative effect. The plain meaning rule applies with special force here: because the federal courts are courts of limited jurisdiction, jurisdictional provisions such as Section 301(a) must be construed narrowly, with fidelity to the terms chosen by Congress.

The analysis of Section 301(a) need not proceed any further. Because Section 301(a) speaks with clarity to the question presented in this case, there is no need to consult the legislative history or federal labor policy. Both, however, support the plain language of the section. The legislative history shows that Congress intended Section 301(a) to apply only in the event of a breach and that Congress considered misconduct during the bargaining process and the violation of collective bargaining agreements to be distinct categories of conduct. Extending the jurisdiction of the federal courts to cover misconduct during the collective bargaining process would unnecessarily and unjustifiably intrude on the normally exclusive authority of the National Labor Relations Board over the process of collective bargaining.

In short, Section 301(a) confers federal jurisdiction only over suits alleging the violation of a collective bargaining agreement. For this reason, the union's suit, which does not allege such a violation, was properly dismissed by the district court for lack of subject matter jurisdiction.

2. Even if Section 301(a) covered suits of a "contractual nature" as the lower court asserted, it would not permit the union's claim to go forward. In enacting the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, Congress entrusted an administrative agency, the National Labor Relations Board, with broad authority over the collective bargaining process. Recognizing that one of Congress' goals in doing so was to ensure uniform application of federal labor policy, this Court has repeatedly found the Board's authority over the collective bargaining process to be generally exclusive. *See, e.g., San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959).

It is, of course, true that this Court has held that breach-of-contract claims brought under Section 301(a) are not subject to *Garmon* preemption. However, the union's claim is in essence a tort claim for fraud based upon alleged misconduct during the collective bargaining process, and falls squarely within the Board's jurisdiction and is therefore preempted. As this Court recognized in *Amalgamated Association of Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971), Section 301(a) only protects claims from preemption under *Garmon* when those claims require the interpretation and application of the terms of a collective bargaining agreement. Since the union's claim does not do so, it would be preempted if it fell within Section 301(a).

ARGUMENT

I. SECTION 301 WAS ENACTED FOR THE IMPORTANT, BUT LIMITED, PURPOSE OF REDRESSING VIOLATIONS OF COLLECTIVE BARGAINING AGREEMENTS.

This case is governed by the language of Section 301(a) of the National Labor Relations Act (NLRA), 29 U.S.C. § 185(a). That language is plain on its face: it confers subject matter jurisdiction upon the federal courts only over "[s]uits for violation of contracts between an employer and a labor organization" such as collective bargaining agreements.

Section 301 was enacted in 1947 because, despite the central role that collective bargaining agreements played in federal law, there were still obstacles at that time to enforcing such agreements. *See, e.g., Dowd Box Co. v. Courtney*, 368 U.S. 502, 512-13 (1962); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 453-56 (1957). The National Labor Relations Board, while possessing the authority to regulate the collective bargaining process, lacked the authority to enforce the agreements that resulted from that process. *See Dowd Box*, 368 U.S. at 511-12. While the courts technically could enforce such agreements, there were obstacles, both substantive and procedural, to their enforcement. *See, e.g.*, R. Gorman, *Basic Text on Federal Labor Law*, 543-44 (1976). In order to understand Congress' solution to these problems, and the scope of the limited jurisdiction Section 301 confers upon the federal courts, it is useful to review the history of that provision and the National Labor Relations Act it amended.

A. Congress Enacted The National Labor Relations Act To Promote The Collective Bargaining Process And To Centralize Regulation Of That Process In The National Labor Relations Board.

As this Court has recognized, "The enactment of the NLRA in 1935 marked a fundamental change in the Nation's labor policies." *Sears, Roebuck & Co. v. San Diego Dist. Council of Carpenters*, 436 U.S. 180, 190 (1978). The NLRA was based on the theory that "recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace." *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 42 (1937). Indeed, the Act explicitly states that the "policy of the United States" is to promote industrial peace "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of . . . self-organization." 29 U.S.C. § 151. The NLRA therefore gives employees covered by the Act the right "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in collective activities." *Id.* § 157.

The NLRA was also meant to "restructure fundamentally the processes" of American labor law. *Amalgamated Ass'n of Street, Electric Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 288 (1971). "By the 1930s, it had been clear for some time that the courts could not be expected to provide answers to the problems presented by the labor movement." 1 P. Hardin, *The Developing Labor Law* 7 (3d ed. 1992). As this Court has noted, the NLRA was based on the "perceived incapacity of common-law courts and state legislatures . . . to provide an informed and coherent basis for stabilizing labor relations conflict." *Lockridge*,

403 U.S. at 286. The standards utilized by the courts in labor cases were "vague, inconsistent, and preeminently dependent upon the predilections of the presiding judges." Gorman, *Basic Text on Federal Labor Law* 2. So, too, traditional judicial remedies, particularly the injunction, proved to be ill-suited to the complexities of labor disputes.[6] And, as Justice Holmes observed while sitting on the Massachusetts Supreme Judicial Court, labor disputes turn upon "considerations of policy and of social advantage," which courts were ill-equipped to weigh in the absence of instruction from elected legislatures. *Vegelahn v. Guntner*, 44 N.E. 1077, 1080 (Mass. 1896) (Holmes, J., dissenting).

In enacting the NLRA in 1935, Congress sought to avoid the perceived shortcomings of the judicial process by "entrust[ing] the administration of labor policy for the Nation to a centralized administrative agency," the National Labor Relations Board. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959). The primary purpose of the Board is to "supervise the collective-bargaining process." *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970). The Act therefore empowers the Board to investigate, prosecute, and adjudicate "unfair labor practice" charges. *See* 29 U.S.C. §§ 158, 160-61. Unfair labor practices are broadly defined by the Act, giving the Board the authority to develop "a body of case law that would govern large portions of the relationship between labor and management." W. Gould, *A Primer on American Labor Law* 29 (3d ed. 1993).[7] The NLRA also confers upon the Board broad discretion to "take such

---

[6] *See* Hardin, *The Developing Labor Law* 6-7; *see generally* F. Frankfurter & N. Greene, *The Labor Injunction* 17-24, 53-60 (1930).

[7] Although the NLRA was initially focused upon securing the right of employees to organize and bargaining collectively, in 1947, as part of the Taft-Hartley or Labor-Management Relations Act, Congress made certain union misconduct, including the refusal to bargain in good faith, unfair labor practices. *See* 29 U.S.C. §158(b); *see generally* H. Millis & E. Brown, *From the Wagner Act to the Taft-Hartley* 271-394 (1950).

affirmative action . . . as will effectuate the policies" of the Act in remedying misconduct during the collective bargaining process and other unfair labor practices. 29 U.S.C. § 160(c); *see generally NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344, 346-47 (1953).

Finding implicit in the NLRA a strong congressional "interest in uniform development of the new national labor policy," this Court has held that the Board has generally exclusive authority over matters within its regulatory jurisdiction. *Sears*, 436 U.S. at 191. The rationale for this exclusive jurisdiction, which has become known as the *Garmon* preemption doctrine, was articulated by Justice Jackson, writing for an unanimous Court, more than forty years ago:

> Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order.

Garner v. Teamsters Local Union No. 776, 346 U.S. 485, 490 (1953).

In so doing, this Court reasoned, "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Id.* Accordingly, this Court held that the Board has generally exclusive authority over matters within its jurisdiction. *See id.* at 498-99.

As later elaborated, the *Garmon* preemption doctrine applies to all matters even arguably within the Board's jurisdiction:

> When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

Garmon, 359 U.S. at 245.

The *Garmon* doctrine is designed to protect not only the Board's authority to set standards, but also its power to fashion remedies.[8] As this Court noted: "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law." *Garner*, 346 U.S. at 490-91. Furthermore, unlike the traditional administrative law doctrine of primary jurisdiction, the *Garmon* doctrine requires more than just initial referral to the Board; it strips courts entirely of the authority to hear claims within the primary authority of the Board. *See International Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 398-99 (1986); *Sears*, 436 U.S. at 199 n.29.

The Board's authority, though broad and generally exclusive, is limited to the process of collective bargaining; it does not extend to regulating the actual terms of the agreements reached in collective bargaining. As this Court has recognized, "It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties." *H.K. Porter Co.*, 397 U.S. at 107-08. The process of collective bargaining is "an effort to erect a system of industrial self-government." *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 (1960). Ideally, it results in more than a mere contract: it creates a "generalized code to govern a myriad of cases which the draftsmen cannot wholly

---

[8] *See, e.g., Garmon*, 359 U.S. at 243 (prohibiting "conflict in its broadest sense," that is, "conflict with a complex and interrelated federal scheme of law, remedy, and administration").

anticipate," *id.* at 578, which in turn fosters a "relationship governed by an agreed-upon rule of law" rather than "the relative strength at any given moment of the contending forces." *Id.* at 580. Federal labor policy is premised upon the assumption that such relationships, entered into voluntarily and cooperatively, are more likely to lead to a stable and lasting peace than any governmentally-coerced cessation of hostilities. *See* 29 U.S.C. § 151.

This policy is most completely effectuated where, as here, the parties enter into collective bargaining agreements that contain both agreements to arbitrate and no-strike clauses. *See Warrior & Gulf*, 363 U.S. at 578 & n.4. Agreements to arbitrate act as a "*quid pro quo* for an agreement not to strike." *Textile Workers Union v. Lincoln Mills*, 353 U.S. at 455. As this Court has recognized, "arbitration is the substitute for industrial strife" (*Warrior & Gulf*, 363 U.S. at 578) and is "at the very heart of the system of industrial self-government" because it "mold[s] a system of private law for all the problems which may arise" under a collective bargaining agreement. *Id.* at 581.

B. Section 301 Was Enacted To Ensure That Collective Bargaining Agreements Could Be Enforced And That Violations Of Those Agreements Would Be Redressed In A Manner Consistent With Federal Labor Policy.

In 1947, when Section 301 was passed as part of the Taft-Hartley Act, there were numerous obstacles to enforcing collective bargaining agreements. The Board did not have any statutory or other authority to enforce such agreements. *See NLRB v. Strong Roofing & Insulating Co.*, 393 U.S. 357, 360 (1969); *Dowd Box*, 368 U.S. at 510-11. Nor were satisfactory remedies available in the courts. Some jurisdictions still subscribed to the common-law view that collective bargaining agreements were only moral obligations and therefore not enforceable contracts, *see* H. Millis & E. Brown, *From the Wagner Act to Taft-Hartley* 503 (1950), and others treated promises to arbitrate in agreements that were still "executory" — that is, that had yet to be fully performed by the party seeking to

enforce them — as unenforceable. *See Lincoln Mills*, 353 U.S. at 456; Gorman, *Basic Text on Federal Labor Law* 544. Furthermore, it was impractical to sue labor organizations in many states where unincorporated associations such as unions were not suable as entities. *See* S. Rep. No. 105, 80th Cong., 1st Sess. 16, *reprinted in* I *Legislative History of the Labor-Management Relations Act, 1947* 422 (1959) [hereinafter, "*Legislative History*"]. In such states, the only way to sue a union to enforce a collective bargaining agreement was to serve each individual member of the union, an "almost impossible process." *Id.; accord* 93 Cong. Rec. 5014 (1947) (Sen. Ball).

Congress found these obstacles to the enforcement of collective bargaining agreements to be an unacceptable threat to the NLRA's policy of achieving industrial peace through the promotion of collective bargaining agreements:

> The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

S. Rep. No. 105 at 16, *reprinted in* I *Legislative History* 422. Congress saw that "[s]tatutory recognition of the collective bargaining agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace." *Id.* at 17, *reprinted in* I *Legislative History* 423.

There was a broad consensus among the supporters of the Taft-Hartley Act that collective bargaining agreements should be enforceable in the federal courts. As the Senate report noted, "to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting commerce should be enforceable in the

Federal courts." S. Rep. No. 105 at 16, *reprinted in Legislative History* 422. Courts and arbitrators, Congress recognized, were best suited to construing the terms of collective bargaining agreements. *See AT&T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 650 (1986); *Lockridge*, 403 U.S. at 300; *see also William E. Arnold Co. v. Carpenters Dist. Council*, 417 U.S. 12, 18 (1974) (noting the "congressional purpose that § 301 suits in state and federal courts should be the primary means for promoting collective bargaining that ends with agreements not to strike") (quotation omitted).

Congress considered giving the Board concurrent authority over the enforcement of collective bargaining agreements. The Senate version of the Taft-Hartley Act made it an unfair labor practice to "violate the terms of a collective bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration." S. 1126, 80th Cong., 1st Sess., tit. I (1947) (proposed Sections 8(a)(6) & 8(b)(5)), *reprinted in* I *Legislative History* 111, 114. In conference, however, this provision was deleted. H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 42 (1947), *reprinted in* I *Legislative History* 546. The conference report explained that "[o]nce parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." *Id.*

In refusing to grant the Board authority to enforce collective bargaining agreements, Congress was acting upon the principle that the NLRA "does not undertake government regulation of wages, hours, or working conditions," but instead "seeks to provide a means by which agreement may be reached with respect to them." *NLRB v. C & C Plywood*, 385 U.S. 421, 427 (1967) (quotation omitted).

> To have conferred upon the National Labor Relations Board generalized power to determine the rights of parties under all collective bargaining agreements would have been a step toward governmental regulation of the terms of those

agreements. We view Congress' decision not to give the Board that broad power as a refusal to take this step.

Id. at 427-28.

Having decided to leave the enforcement of collective bargaining agreements exclusively to the courts, Congress carefully defined that jurisdiction by limiting it to "[s]uits for violation of contracts between an employer and a labor organization, or between any such labor organizations."[9] *Id.* § 185(a). The consequences of this jurisdictional grant were not merely procedural. One of the important objectives of Congress in enacting Section 301 was to secure uniform federal rules for enforcing collective bargaining agreements. *See Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962).[10] This Court has therefore interpreted Section 301 to authorize the courts to fashion a federal common law for the interpretation and application of collective bargaining agreements, derived "from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456-57. Thus, where Section 301 applies, the rights of the parties are determined by federal law.

---

[9] Congress also enacted provisions designed to "fill the gaps in the jurisdictional law of some of the States." *Dowd Box Co.*, 368 U.S. at 512. It provided that labor unions "may sue or be sued as an entity." 29 U.S.C. § 185(b). It stated that service upon an officer or agent of a labor organization "shall constitute service upon the labor organizations" and that labor organizations shall be deemed present wherever their "duly authorized officers or agents" are representing employee members. *Id.* §§ 185(c) & (d); *see also id.* § 185(e) (providing that, in determining whether an individual is a union agent under Section 301, actual authorization of the individual's actions is not necessary). Section 301 provided as well that money judgments against labor organizations shall be enforceable only against the organizations and not against individual members. *See id.* § 185(b).

[10] This Court has, however, held that Congress did not intend to prevent state courts from also enforcing collective bargaining agreements. *See Dowd Box*, 368 U.S. at 507-13.

Although the Taft-Hartley Act continued generally the exclusive jurisdiction of the Board over the collective bargaining process and gave the courts jurisdiction to enforce the agreements, some overlap in the two jurisdictions was inevitable. Finding this limited overlap tolerable, this Court has, on several occasions, held the *Garmon* preemption doctrine inapplicable to suits alleging violations of collective bargaining agreements. *See, e.g., Smith v. Evening News Ass'n*, 371 U.S. 195, 197-98 (1962).[11] As this Court explained,

> The strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Act.

Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 562 (1976) (citations omitted). Moreover, in enforcing agreements, courts may adjudicate defenses arising under the NLRA. *See Communication Workers v. Beck*, 487 U.S. 735, 743 (1988); *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-86 (1982). Conversely, the Board must sometimes interpret collective bargaining agreements in order to adjudicate unfair labor practice charges. *See NLRB v. C&C Plywood*, 385 U.S. at 428-30; *see generally* Hardin, *The Developing Labor Law* 1003-07.

While some overlapping jurisdiction was acceptable, Congress did not intend Section 301 to give the courts authority to regulate the collective bargaining process or to define federal law in that area. A wholesale reintroduction of the courts into the regulation of labor relations would have been entirely inconsistent with the

---

[11] *See also William E. Arnold Co.*, 417 U.S. at 15-19; *Sinclair Refining Co.* v. *Atkinson* , 370 U.S. 238, 245 n.5 (1962), *overruled on other grounds, Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970); *Lucas Flour Co.*, 369 U.S. at 101 n.9; *see also Dowd Box*, 368 U.S. at 513 (holding that *Garmon* preemption does not apply to suits for violation of labor contracts brought in state court).

structure and philosophy of the NLRA and would have resulted in extensive and undesirable overlap between the jurisdiction of the Board and the courts. Accordingly, in enacting Section 301, Congress carved out only a limited role for the federal courts in enforcing collective bargaining agreements. Section 301(a) limited the courts' jurisdiction to "[s]uits for violation of contracts." 29 U.S.C. § 185(a).

II. THE UNION'S CLAIM DOES NOT FALL WITHIN THE LIMITED SCOPE OF SECTION 301.

The plain language of Section 301(a) confers federal jurisdiction only over "[s]uits for violation of contracts." 29 U.S.C. § 185(a). This restriction upon the jurisdiction of the federal courts is confirmed by both the legislative history of the section and the overall structure of the NLRA. Indeed, expanding the jurisdiction of the federal courts beyond the limits of the plain language of Section 301(a) would create an unnecessary and unjustified intrusion upon the generally exclusive authority of the Board over the collective bargaining process.

A. The Plain Language Of Section 301(a) Grants Federal Jurisdiction Only Over Suits That Allege The Violation Of A Collective Bargaining Agreement.

It is well-settled that in interpreting a statute, one must "look first to its language, giving the words used their ordinary meaning." *Moskal v. United States*, 498 U.S. 103, 108 (1990) (quotation and citation omitted). The language of Section 301(a) provides:

> *Suits for violation* of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a) (emphasis added).[12] While this language authorizes federal courts to hear suits "for violation" of a collective bargaining agreement, it plainly does not authorize them to consider suits that do not even allege the violation of an agreement. Indeed, if Section 301(a) were extended to cover all suits relating to contractual disputes without regard to whether a violation was present, then the words of limitation "for violation" would be rendered meaningless. It is well-settled, however, that "[s]tatutes must be interpreted, if possible, to give each word some operative effect." *Walters v. Metropolitan Educ. Enter., Inc.*, 117 S. Ct. 660, 664 (1997) (citation omitted).

Largely ignoring this language, the Third Circuit assumed that "Congress intended that the courts resolve disputes of a contractual nature." Pet. App. 10a. The best evidence of Congress' intent is, however, "the statutory text adopted by both Houses of Congress and submitted to the President." *West Virginia Univ. Hosps. Inc. v. Casey*, 499 U.S. 83, 98-99 (1991); *see also Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what is says there.") (citations omitted). Here, that text belies any notion that Congress intended to extend federal jurisdiction over all disputes relating to collective bargaining agreements. If Congress had so desired, it could easily have granted jurisdiction over suits "concerning" or "relating to" labor contracts rather than just "[s]uits *for violation* of contracts." Since Congress did not use such broad language, Section 301(a) cannot be read to extend federal jurisdiction over suits that do not allege the violation of a collective bargaining agreement. *See Casey*, 499 U.S. at 99.

The analysis need not proceed any further. As this Court has recognized on numerous occasions, "when a statute speaks with

---

[12] Although Section 301(a) applies to all contracts between labor organizations and employers, as well as to contracts between labor organizations, for the sake of convenience this brief refers simply to collective bargaining agreements.

clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 295 (1995) (quotation omitted).[13] The language of Section 301(a) cannot be stretched to cover suits that do not allege the violation of a collective bargaining agreement, and there are no extraordinary circumstances requiring this Court to ignore the plain language of this section. It follows that Section 301(a) cannot be interpreted to grant the federal courts jurisdiction over suits such as this one that do not allege the violation of a collective bargaining agreement.

The plain meaning rule applies with particular force where jurisdictional statutes are involved. "Federal courts are courts of limited jurisdiction." *Kokken v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). As a consequence, it is well-settled that "[j]urisdictional statutes are to be construed with precision and with fidelity to the terms by which Congress has expressed its wishes." *Bread Political Action Comm. v. FEC*, 455 U.S. 577, 580-81 (1982) (quotation omitted); *accord Palmore v. United States*, 411 U.S. 389, 396 (1973); *Cheng Fan Kwok v. INS*, 392 U.S. 206, 212 (1968); *Utah Junk Co. v. Porter*, 328 U.S. 39, 44 (1946). Indeed, "[i]t is to be presumed that a cause lies outside [the] limited jurisdiction" of the federal courts. *Kokken*, 511 U.S. at 377 (citation omitted). As a consequence, the limitation that the plain language of Section 301(a) imposes upon the jurisdiction of the federal courts cannot be ignored.

---

[13] *See, e.g., Brown v. Gardner*, 513 U.S. 115, 120-21 (1994); *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 409-10 (1993); *Germain*, 503 U.S. at 254; *Ardestani v. INS*, 502 U.S. 129, 135 (1991); *Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989); *Garcia v. United States*, 469 U.S. 70, 75 (1984); *Rubin v. United States*, 449 U.S. 424, 430 (1981); *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

The majority of lower courts to consider the issue have concluded that Section 301(a) is limited to suits for violation of collective bargaining agreements. *See, e.g., A.T. Massey Coal Co., Inc. v. International Union, United Mine Workers*, 799 F.2d 142, 145 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987); *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972); *Heussner v. National Gypsum Co.*, 887 F.2d 672, 676 (6th Cir. 1989); *Corvallis Sand & Gravel Co. v. Hoisting Portable Eng'rs*, 419 P.2d 38, 44 (Or. 1966), *cert. denied*, 387 U.S. 904 (1967). These courts have recognized that "under Section 301(a), district courts possess subject matter jurisdiction in cases involving an alleged violation of an existing collective bargaining agreement" but not in cases merely raising "questions of the *validity* of collective bargaining agreements." *Heussner*, 887 F.2d at 676; *see also Corvallis*, 419 P.2d at 44 ("[I]f any significance is to be given to the words 'for violation of contracts' a suit such as the present one does not come within its embrace."). The decision below and the others that have broadened the statute to include disputes of a "contractual nature"[14] cannot reconcile their interpretations with the language of the statute. Indeed, for the most part, they simply ignore the language of Section 301(a).

B. The Legislative History Confirms The Limited Scope Of Section 301(a).

The legislative history — to the extent that it is relevant — does not contradict the plain meaning of Section 301(a). To the contrary, it confirms that Congress intended to confer federal jurisdiction only where there was a violation of a collective bargaining agreement.

---

[14] *See International Bhd. of Electrical Workers v. Sign-Craft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988); *Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1321, 1326 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989); *McNally Pittsburgh, Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 619 (10th Cir. 1987).

As this Court has observed, "[t]he direct antecedent of § 301 was § 10 of the Case bill, which was passed by both Houses of Congress, but vetoed by the President in 1946." *Dowd Box*, 368 U.S. at 509 (citation omitted). That portion of the Case bill provided in pertinent part:

> *In the event of a breach of any such [labor] contract* or of any agreement contained in such contract by either party thereto, then, in addition to any other remedy or remedies existing, *a suit for damages for such breach* may be maintained by the other party or parties in any State or United States district court having jurisdiction over the parties.

H.R. 4908, 79th Cong., 2d Sess., § 10 (1946) (emphasis added), *reprinted in Lincoln Mills*, 353 U.S. at 487. This provision is plainly limited to situations in which a collective bargaining agreement has been violated: it applies only "[i]n the event of a breach" and only to a "suit for damages for such breach." *Id.* Although Section 10 of the Case bill was later revised in the Senate into its present form, there is no evidence that the revision was intended to expand federal jurisdiction. To the contrary, Representative Case assured his colleagues that Section 301 "carr[ied] out the same purpose we had in the House Bill." 92 Cong. Rec. 5930 (1946). This Court has therefore recognized Section 301 as just a "slightly recast version of § 10 of the Case bill." *Dowd Box*, 368 U.S. at 511.

The legislative history also shows that Congress perceived a clear distinction between enforcement of collective bargaining agreements and the regulation of conduct during the collective bargaining process. As mentioned above, *see supra* p. 17, the Senate considered making it an unfair labor practice to "violate the terms of a collective-bargaining agreement or the terms of an agreement to submit a labor dispute to arbitration." S. 1126, 80th Cong., 1st Sess., tit. I (proposed Sections 8(a)(6) & 8(b)(5)), *reprinted in* I *Legislative History* 111, 114. In so doing, the Senate was drawing a distinction between misconduct during the collective bargaining process, which was already an unfair labor practice, *see* 29 U.S.C. § 158(a)(5) (making it an unfair labor

practice to "refuse to bargain collectively"), and violation of the terms of completed collective bargaining agreements, which was not. Since Section 301 covers only "violations" of collective bargaining agreements, Congress could not have understood that language to encompass fraud and other misconduct in the collective bargaining process.

Nor is there any reason to think that any intent to expand federal jurisdiction beyond that conferred by the plain language of Section 301 (a) would have gone unmentioned during the legislative debates. The Taft-Hartley Act was, according to Senator Taft, "considered in more detail and more thoroughly studied" than any enactment in his experience. 93 Cong. Rec. 3614 (1947). Opponents of Section 301 specifically challenged the section on the ground that it would "impose a needlessly increased burden on the Federal courts." S. Rep. No. 105, 88th Cong., 1st Sess., Part 2, at 14 (minority report), *reprinted in* I *Legislative History* 475. Nevertheless, there was no suggestion that Section 301 would allow any dispute of a contractual nature to be brought in federal court. To the contrary, the opponents of Section 301 consistently recognized that the section would apply to breaches or violations of collective bargaining agreements.[15]

---

[15] *See, e.g.*, S. Rep. No. 1177, 79th Cong., 2d. Sess. 8-9 (1946), *reprinted in Lincoln Mills*, 353 U.S. at 493-94 ("By offering easy access to the courts *in cases where a breach of a collective bargaining agreement is alleged*, [Section 301] would act as an inducement to litigate every alleged grievance, and would result in a flood of litigation.") (emphasis added); 92 Cong. Rec. 5412 (statement of Sen. Magnuson) (noting that Section 301 would extend federal jurisdiction over suits "*for breach* of a collective-bargaining agreement") (emphasis added); *id.* at 5413 (statement of Sen. Magnuson) ("I see no reason why it is necessary for the Federal Government to invade the realm of the States to such an extent as to furnish them laws governing suits *for breaches* of purely private contracts") (emphasis added).

Thus, far from endorsing court involvement in all disputes of a contractual nature, the legislative history shows Congress intended to limit federal courts to redressing contract violations.

C. Extending Federal Jurisdiction Beyond The Limits Of The Plain Language Of Section 301(a) Would Bring The Federal Courts Into Unnecessary And Unjustified Conflict With The Labor Board.

The Third Circuit found its interpretation of Section 301(a) "buttressed in policy terms" because it saw no reason to permit the union to raise fraudulent inducement as an affirmative defense to a suit to enforce the collective bargaining agreement while preventing it from raising the same claim to invalidate the agreement. Pet. App. 10a. In fact, there is a significant and compelling reason for the different treatment: the generally exclusive authority over the collective bargaining process that Congress entrusted upon the National Labor Relations Board. While conferring jurisdiction over the enforcement of collective bargaining agreements creates some overlap between the jurisdiction of the courts and that of the Board, the potential for conflict is limited and the reasons for tolerating this potential compelling. Where, however, consideration of a claim such as the union's, that is based upon misconduct during the collective bargaining process, is divorced from any construction of the terms of a collective bargaining agreement, the potential for conflict is heightened and the reasons for tolerating such conflict disappear. As a consequence, permitting suits to invalidate contracts based upon conduct during the negotiation process creates an unnecessary and unjustified intrusion upon the primary jurisdiction of the Board.

In a suit for the violation of a collective bargaining agreement, the risk of conflict between the courts and the Board is generally limited. *See* Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. 529, 570 (1963) ("In the great mass of cases clashing mandates are impossible.") The vast majority of such disputes deal with purely contractual issues such as wages, fringe benefits, work assignments, promotions, layoffs,

management rights, discipline, and discharge. *See* Research Committee of the National Academy of Arbitrators, *Labor Arbitration in America: The Profession and Practice* 87 (1992).[16] Because the NLRA is "concerned primarily with establishing an equitable process for determining terms and conditions of employment, and not with particular substantive terms of the bargain that is struck," *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 753 (1985),[17] consideration of such issues by courts and arbitrators does not rise a significant potential for conflict with the Board's administration of the NLRA.

The court cases that potentially overlap with the matters within the Board's jurisdiction — cases involving disputes over alleged discrimination against union members, the permissibility of strikes, and other union activities — constitute a very small percentage of the overall number of labor arbitration cases. According to the Federal Mediation and Conciliation Service, from 1992 to 1995, such cases constituted less than four percent of the labor cases involving arbitrators on the Service's roster. Federal Mediation and Conciliation Service, *Forty-Eighth Annual Report* 40 (1995). Figures reported by the American Arbitration Association are similar. *See* American Arbitration Association,

---

[16] Almost all disputes over the meaning of collective bargaining agreements are presented to arbitrators. Nearly every collective bargaining agreement calls for binding arbitration, *see Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 411 n.11 (1988), there is a strong presumption that disputes are arbitrable, *see, e.g., Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 377-79 (1974); *Warrior & Gulf*, 363 U.S. at 584-85), and courts are not permitted to consider the merits of an arbitrator's decision, *see, e.g., United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36-38 (1987); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596-98 (1960).

[17] *See also H.K. Porter Co.*, 397 U.S. at 106 (noting that the Board does not regulate "wages, hours, and other terms and conditions of employment").

Case Reports Provide Profile of Labor Arbitration Case, Study Time, No. 4, 1989, at 2 (approximately 3.3%).

To be sure, as described above, there will be some instances of overlapping jurisdiction — where the Board and the courts will have to adjudicate similar or even the same issues. But in these instances, enforcement of collective bargaining agreements in the face of potential conflict with the Board is supported by a compelling justification: the need for court interpretation of the language of the agreements either directly or by reference to arbitration. Where the NLRA and a collective bargaining agreement both regulate the same conduct, courts and arbitrators perform an important and independent role. "[A]lmost never does a contractual prohibition of an unfair labor practice exist without also implicating a part of the relationship between the employer and the union which rests wholly on their agreement." Dunau, *Contractual Prohibition of Unfair Labor Practices: Jurisdictional Problems*, 57 Colum. L. Rev. 52, 80 (1957); *accord* Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. at 557. If breach-of-contract claims that overlapped with an unfair labor practice were prohibited, parties would be unable to enforce the many contractual obligations that augmented or extended the protections conferred by the NLRA.

Indeed, even where a provision in a collective bargaining agreement simply duplicates a statutory protection, the parties have agreed upon something more than the standard by which certain conduct may be judged and the remedies that will be available: they have also agreed upon the method by which it will be judged. *See* Dunau, *Contractual Prohibition of Unfair Labor Practices*, 57 Colum. L. Rev. at 66-68; Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. at 557. Since "[t]he ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace," *Lucas Flour*, 369 U.S. at 104, federal policy dictates that any conflict created by the consideration of suits governed by the terms of a collective bargaining agreement and the corresponding statutory remedy be tolerated. *See Hines*, 424 U.S. at 562.

In other situations, the overlap between Board jurisdiction may be the result of an affirmative defense to contract enforcement. For example, in *Kaiser Steel Corp. v. Mullins*, the petitioner defended against a breach-of-contract claim by contending that the clause allegedly breached was an illegal, and therefore unenforceable, "hot-cargo agreement" under the NLRA. *See* 455 U.S. at 76. The courts have a compelling reason to entertain affirmative defenses in breach-of-contract claims: their "duty to determine whether a contract violates federal law before enforcing it." *Id.* at 83.[18] "Were the rule otherwise, parties could be compelled to comply with contract clauses, the lawfulness of which could be insulated from review by any court." *Id.* at 86. For the same reason, before enforcing an agreement, courts must adjudicate affirmative defenses such as fraud based upon conduct occurring in the collective bargaining process.

There is no similar justification for creating overlapping jurisdiction, and potential conflicts between the courts and the Board, where the courts have no role to play in contractual interpretation and the Board has been granted full authority to afford relief.[19] As discussed below, that is exactly the situation here. Certainly, federal jurisdiction is not needed here in order to avoid forcing the union to resort to self-help: as the unfair labor practice charge filed in this case demonstrates, the union had the option of filing an unfair labor charge before the Board, which can not only award damages based upon misconduct such as fraud during the collecting bargaining process, *see, e.g., NLRB*

---

[18] *See also* Meltzer, *The Supreme Court, Congress, and State Jurisdiction Over Labor Relations*, 59 Colum. L. Rev. 269, 291 (1959) (noting the "undesirability of fragmenting jurisdiction when unfair labor practices are urged as a defense in an action on a collective bargaining agreement").

[19] *See* Sovern, *Section 301 and the Primary Jurisdiction of the NLRB*, 76 Harv. L. Rev. at 572 ("If for some definable class of cases involving collective agreements it could be said . . . that the Board can give all that the courts can give, application of *Garmon* would be appropriate.")

v. J.H. Rutter-Rex Mfg. Co., 396 U.S. 258, 263 (1969), but can also invalidate contracts based upon such misconduct, *see, e.g., National Licorice Co. v. NLRB*, 309 U.S. 350, 361 (1940); *Waymouth Farms, Inc.*, Nos. 18 CA 12766 and 12891, 1997 WL 693024, at *4 (NLRB Oct. 31, 1997).[20] Furthermore, it cannot be argued that the courts are more competent to consider issues such as fraud since there is no question as to the interpretation of the contract language. The Board with its long experience in the collective bargaining process is much better-suited to determine whether information not supplied during collective bargaining was relevant and whether the claimed reliance was either real or reasonable. As a consequence, there is no apparent justification for permitting the federal courts to consider suits such as this one which seek to invalidate a collective bargaining agreement and which do not seek to redress the violation of such an agreement.

This Court has previously made clear that Section 301 should be construed to avoid overlapping jurisdiction between the courts and the Board where possible. In *Retail Clerks International Association, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.*, 369 U.S. 17 (1962), this Court considered whether a contract negotiated by a union that had not been recognized as an exclusive bargaining representative may be enforced under Section 301(a). *See id.* at 28-29. In so doing, this Court noted that "if the federal courts' jurisdiction under § 301(a) required a preliminary determination of the representative status of the labor organization involved, potential conflict with the National Labor Relations Board would be increased . . . ." *Id.* at 29 (citations omitted). It therefore held that the courts should not adjudicate

---

[20] While the Board cannot award the punitive damages the union seeks, *see, e.g., Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 288 n.5 (1986) ("Punitive sanctions are inconsistent . . . with the remedial philosophy of the NLRA."), punitive damages are not available in breach-of-contract actions under Section 301(a) either. *See Commissioner of Internal Revenue v. Schleier*, 515 U.S. 323, 343 (1995) (O'Connor, J., dissenting) ("Punitive damages are traditionally available only in tort.").

the issue of representative status, in part, because such adjudications would increase the potential for conflict. *See id.* Similarly, here, Section 301 should not be construed to create unnecessary overlapping jurisdiction.

D. The Union Here Does Not Allege Any Violation Of A Collective Bargaining Agreement.

Although the union's suit here relates to the 1994 collective bargaining agreement between the UAW and Textron Lycoming, it does not allege any violation of that agreement. To the contrary, most of the conduct alleged in the complaint occurred between October 1993 and March 1994, prior to the agreement's April 1, 1994, effective date. J.A. 4, 17-18. The only alleged conduct that occurred after the effective date of the agreement was Textron Lycoming's announcement that it planned to subcontract parts production. J.A. 18. The collective bargaining agreement, however, expressly recognized the company's right to subcontract out work historically performed by union members so long as the union was "advised of such potential contract seven (7) working days prior to contracting out of the work." J.A. 15. As there is no allegation that Textron Lycoming failed to provide adequate notice, the complaint clearly does not allege any violation of the collective bargaining agreement.

Nor does the union's complaint seek to enforce the collective bargaining agreement between Textron Lycoming and the UAW. Instead, the complaint seeks to invalidate the agreement, asserting that Textron Lycoming made "material misrepresentations" to the union during the negotiation of the agreement and that the union relied upon those misrepresentations in agreeing to the 1994 collective bargaining agreement. The complaint therefore asserts that the agreement is "voidable at the option of the UAW" and seeks a declaratory judgment "that the existing collective bargaining agreement between the parties is voidable at the option of Plaintiff UAW." J.A. 18-19. Thus, the union's suit is plainly not "for violation" of a collective bargaining agreement.

It makes no difference that the union sought a declaratory judgment. It is true that Congress intended Section 301 to make

available not just damages, but a range of remedies including suits "under the Declaratory Judgment Act in order to secure declarations from the court of legal rights under the contract." 93 Cong. Rec. 3656 (Statement of Rep. Barden); *accord Lincoln Mills*, 353 U.S. at 456. The availability of a declaratory judgment remedy does not, however, expand the subject matter jurisdiction of the federal courts. *See, e.g., Skelly Oil Co. v. Philips Petroleum Co.*, 339 U.S. 667, 671-72 (1950) (holding that the subject matter jurisdiction of the federal courts is "not altered by the Declaratory Judgment Act").[21]

As the complaint filed by the union demonstrates, this case presents a controversy that is essentially the same as one that could have been, and was in fact, brought before the Board. The factual allegations are nearly identical. Like the unfair labor practice complaint filed by the Board, the district court complaint filed by the union alleges that, during negotiations over the 1994 collective bargaining agreement, the union requested information concerning Textron Lycoming's future subcontracting plans, and that Textron Lycoming failed to disclose those plans, thereby fraudulently inducing the union to agree to sign the agreement. *Compare* J.A. 17-19 *with* J.A. 25-26.

Moreover, the key element of the union's case is the same as the key element of the Board's. In order to void the collective bargaining agreement based upon fraud, the union would have to prove that its assent to the collective bargaining agreement was "induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying."

---

[21] Nor does this Court's decision in *Dowd Box* suggest otherwise. While the plaintiffs in that case sought a declaration that "there existed a valid and binding collective bargaining agreement," they also alleged that their employer had announced that it would not honor a settlement agreement with the union. *See Dowd Box*, 368 U.S. at 504. This is, of course, a contractual violation: namely, a breach by anticipatory repudiation. *See, e.g., Roehm v. Horst*, 178 U.S. 1, 7 (1899); *see generally* Restatement (Second) of Contracts § 250 (1981).

Restatement (Second) of Contracts § 164(1) (1981). Similarly, in order to show that Textron Lycoming failed to bargain in good faith, the Board would have to show that there was a duty to bargain over the decision to subcontract (*see supra* p. 12 n. 7) and that the information withheld was relevant to the issues being negotiated. *See Architectural Fiberglass*, 165 NLRB 238, 240 (1967); *see generally NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Thus, as courts have recognized, a claim of fraud based upon as alleged failure to disclose information during the collective bargaining process is essentially "indistinguishable from an unfair labor practice claim that could have been pursued before the NLRB." *Kolentus v. AVCO Corp.*, 798 F.2d 949, 961 (7th Cir. 1986), *cert. denied*, 479 U.S. 1032 (1987); *accord Parker v. Connors Steel Co.*, 855 F.2d 1510, 1516 (11th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Serrano v. Jones & Laughlin Steel Co.*, 790 F.2d 1279, 1288 (6th Cir. 1986).

Unlike the situation in which an unfair labor practice is raised as a defense, the union here seeks an affirmative remedy for conduct that could have formed the basis for an unfair labor practice claim. Should the union prevail, a conflict in the remedies is virtually certain. As mentioned above, the union here seeks a declaration that the collective bargaining agreement is voidable at its option. J.A. 19. It requested that the Board seek similar relief in the unfair labor practice proceeding. *See supra* p. 5. The Board chose to exercise its discretion to seek only to prohibit Textron Lycoming from relying upon the subcontracting clause. J.A. 26. It is well-settled, however, that under the NLRA "conflict is imminent whenever two separate remedies are brought to bear on the same activity." *Wisconsin Dep't of Indus v. Gould, Inc.*, 475 U.S. at 282, 286 (1986) (quotation omitted); *see also Lockridge*, 403 U.S. at 287 ("Conflict in technique can be as fully disruptive to the system Congress erected as conflict in overt policy."). As a consequence, this case presents an unprecedented intrusion upon both the substantive and the remedial authority of the Board.

Finally, there is no justification for this intrusion. The Board is more than capable of assessing whether the information

allegedly withheld should have been disclosed, and it is clearly better suited than any court to consider Textron Lycoming's defense that the decision to outsource machining work was a fundamental change in the business that is not even subject to bargaining.[22]

As a consequence, there is no reason to ignore the limitations upon federal jurisdiction imposed by the plain language of Section 301(a). The union's claim was properly dismissed for lack of subject matter jurisdiction by the district court.

III. IN ANY EVENT, SECTION 301(a) DOES NOT PERMIT THIS SUIT, WHICH IS IN ESSENCE A TORT CLAIM FOR FRAUD.

Even if the union were correct and Section 301(a) did extend beyond its plain language to encompass claims of a contractual nature, Section 301 would not permit this action. The union's claim is not based upon contract. It is instead essentially a tort claim for fraud. As a consequence, even if disputes of a

---

[22] As Textron Lycoming pointed out to the Board, *see* Letter from Brian Steinbach to Barry Kearney, June 2, 1995, at 1-3, in the last fifteen years, the market for the single piston engine products produced by Textron's Lycoming division has declined dramatically, leading to a reduction in engine production of over 90%. This change has made maintaining machining equipment and associated manufacturing processes prohibitively expense. Indeed, at present production levels, for some parts the overhead cost alone is greater than the price at which the part can be sold. Petitioner therefore decided in the spring of 1994 to change the nature and direction of its enterprise: to go out of the business of manufacturing engines and focus instead on assembling the engines still being purchased, overhauling existing engines, and distributing spare parts. This decision, petitioner will argue, is a core entrepreneurial decision over which the company was not required to bargain. *See First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 686 (1981) (holding that decision to "shut down part of its business for purely economic reasons" is not a subject "over which Congress has mandated bargaining"); *see also Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 217-26 (1964) (Stewart, J., concurring).

contractual nature were within Section 301, that section would not save this suit from preemption under the *Garmon* doctrine. *See supra* pp. 13-14 (discussing the doctrine).

This Court has held that parties may not escape preemption under Section 301 by simply "relabeling as tort suits actions simply alleging breaches of duties assumed in collective-bargaining agreements." *Livadas v. Bradshaw*, 512 U.S. 107, 123 (1994) (quotation and citation omitted); *see also Steelworkers v. Rawson*, 495 U.S. 362, 371-72 (1990) ("Pre-emption by federal law cannot be avoided by characterizing the Union's [conduct] pursuant to the terms of the collective-bargaining contract as a state-law tort."); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985) (refusing to permit parties "to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract").[23] As this Court has stated, "It is not the label affixed to the cause of action . . . that controls the determination of the relationship between state and local jurisdiction." *Local 100, United Ass'n of Journeymen & Apprentices v. Borden*, 373 U.S. 690, 698 (1963).

This is, however, exactly what the union, by labeling its claim as a contract claim, attempted to do here. The complaint in this case actually alleges a tort claim for fraud. It asserts that Textron Lycoming represented to the union that it had no plans to subcontract out bargaining unit work, that this representation was both material and false, that the union relied upon this false misrepresentation, that the union's reliance was reasonable, and that the union suffered injury as a result. J.A. 17-19. Moreover, the complaint does not merely seek a declaration that the agreement was voidable, as a complaint raising an affirmative defense of misrepresentation under contract law would. *See* Restatement (Second) of Contracts § 164. The complaint also seeks "compensatory and punitive damages." J.A. 19. As

---

[23] Similarly, parties may not escape preemption under *Garmon* "simply by casting statutory claims as violations of the union's duty of fair representation." *Communications Workers v. Beck*, 487 U.S. at 743.

"[p]unitive damages are traditionally available only in tort" (*Commissioner of Internal Revenue v. Schleier*, 515 U.S. 323, 343 (1995) (O'Connor, J., dissenting)), it is clear that the union has not brought a contract claim. It has instead brought a tort claim, which is not saved from *Garmon* preemption by Section 301.

Under *Garmon*, "[w]hen an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board . . . ." *Garmon*, 359 U.S. at 245. The activity at issue here — Textron Lycoming's alleged failure to disclose its future subcontracting plans — is clearly subject to Section 8 of the Act. That section requires employers to "bargain collectively" and "confer in good faith," 29 U.S.C. §§ 158(a)(5) & (d), a duty that includes the "general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *Acme Industrial Co.*, 385 U.S. at 435-36 (citation omitted). Accordingly, as the complaint issued by the Board demonstrates, the union's claim falls squarely within the Board's ordinarily exclusive jurisdiction.

It should come as no surprise that the lower courts have found fraud claims based upon the alleged failure to disclose information during bargaining to be "indistinguishable from an unfair labor practice claim that could have been pursued before the NLRB" and therefore have held them to be preempted under *Garmon*. *Kolentus v. AVCO Corp.*, 798 F.2d at 961; *accord Parker v. Connors Steel Co.*, 855 F.2d at 1516; *Serrano v. Jones & Laughlin Steel Co.*, 790 F.2d at 1288.

It is, of course, true that in *Smith v. Evening News Association* this Court held that the "authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract . . . is not exclusive and does not destroy the jurisdiction

of the courts in suits under § 301." 371 U.S. at 197.[24] There is, however, no "unfair labor practice which also violates a collective bargaining contract" in this case for the simple reason that the union has not alleged any violation of the terms of a collective bargaining agreement. The "strong policy favoring judicial enforcement of collective bargaining agreements" (*Hines*, 424 U.S. at 562), which saves most suits under Section 301 from *Garmon* preemption, is obviously inapplicable where, as here, the suit seeks not to enforce a collective bargaining agreement, but to invalidate it. *Smith v. Evening News* should therefore not be extended to protect claims such as the union's here from preemption under *Garmon*.

This Court has previously recognized the limited scope of the "*Smith v. Evening News* principle." In *Motor Coach Employees v. Lockridge*, the plaintiff was a union member who had been suspended from the union for late payment of dues and, at the union's request, terminated from employment pursuant to a union security clause. *See* 403 U.S. at 278-79; *see also* 29 U.S.C. § 158(a)(3) (authorizing union security clauses). The plaintiff alleged that he had been improperly suspended and that the union's constitution contained a "promise, implied in law, that the Union would not seek termination of his employment unless he was sufficiently derelict in his dues payments to subject him to loss of his job under the applicable collective-bargaining agreement." *Lockridge*, 403 U.S. at 279. Much like the union here, the plaintiff in *Lockridge* argued, among other things, that Section 301 protected his claim from preemption. *See id.* at 298. This Court rejected the argument and held the plaintiff's claim preempted under *Garmon*. *See id.* at 301-02.

---

[24] Even, however, in the area of contract enforcement, *Garmon* is not entirely inapplicable. *Smith v. Evening News* specifically refused to hold that all such claims are exempt from preemption under *Garmon*. Instead, this Court stated that if "there are situations in which serious problems will arise from both the courts and the Board having jurisdiction over acts which amount to an unfair labor practice, we shall face those cases when they arise." 371 U.S. at 197-98.

In so doing, this Court recognized a significant limitation upon the reasoning in *Evening News*. Although suits under Section 301 are generally exempt from preemption under *Garmon*, this exemption is based upon a "legislative determination that courts are fully competent to resolve labor relations disputes *through focusing on the terms of a collective bargaining agreement*." *Lockridge*, 403 U.S. at 300 (emphasis added). When, however, the terms of a union-employee contract have been implied as a matter of law, this rationale does not apply: "the principle of *Smith v. Evening News* is applicable only to those disputes that are governed by the terms of the collective-bargaining agreement itself." *Id.* at 300-01.

By the same token, even if the union's claim were covered by Section 301, Section 301 would not save it from preemption under *Garmon* because the union's claim here is based upon alleged misconduct during the collective bargaining process and is not in any way governed by the terms of the collective bargaining agreement.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939

Counsel for Petitioner
Textron Lycoming Reciprocating
Engineering Division, AVCO Corp.

December 29, 1997

FILED
MAR 30 1998
CLERK

No. 97-463

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR RESPONDENTS

MARSHA S. BERZON
177 Post Street
San Francisco, CA 94104

JAMES B. COPPESS
815 16th Street, N.W.
Washington, D.C. 20006

LAURENCE GOLD
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Ave.
Detroit, MI 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

34 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATUTES INVOLVED	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	6
ARGUMENT	8
1. The Federal Common Law of Labor Contracts	8
2. The Sole Question Presented in this Case	10
3. The Company's Position	13
4. This Court's Interpretation of LMRA § 301	15
5. Labor Contract Declaratory Judgment Suits	18
6. *Garmon* Pre-emption and § 301 Suits	24
7. NLRB Regulation of the Bargaining Process	27
CONCLUSION	29

TABLE OF AUTHORITIES

CASES Page

Allis Chalmers v. Lueck, 471 U.S. 202 (1985) 6, 16, 17
Association of Westinghouse Employees v. Westinghouse Electric Corp., 348 U.S. 437 (1955) 16
Avco Corp. v. Local Union, 787 UAW, 459 F.2d 968 (3rd Cir. 1972) 21
B. Brooks Inc. v. Int'l Ladies Garment Wkrs. Union, 835 F.2d 1164 (6th Cir. 1987) 9
Beverly Enterprises v. District 1199C, 90 F.3d 93 (3rd Cir. 1996) 26
Black Clawson Co. v. Int'l Ass'n of Machinists Lodge 355, 313 F.2d 179 (2nd Cir. 1962) 18, 19, 24
Blessing v. Freestone, 117 S.Ct. 1353 (1997) 11
Bowen v. United States Postal Service, 459 U.S. 212 (1983) 17
Burlington No. R. Co. v. Maintenance Employees, 481 U.S. 429 (1987) 13
Chemical Workers v. Pittsburg Plate Glass Co., 404 U.S. 157 (1971) 14
Communications Workers v. Beck, 487 U.S. 735 (1988) 26
Connell Co. v. Plumbers and Pipefitters, 421 U.S. 616 (1975) 25, 26
Dowd Box v. Courtney, 368 U.S. 502 (1962) 7, 9, 19
El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. General Contractors, 376 F.2d 797 (5th Cir. 1967) 19
Franchise Tax Board v. Construction Laborers Trust, 463 U.S. 1 (1983) 18, 19, 20, 23, 24
General Cable Corp., 139 NLRB 1123 (1962) 12
Groves v. Ring Screw Works, 498 U.S. 168 (1991) .. 7, 19, 22, 25
Honig v. Doe, 484 U.S. 305 (1988) 13
Hotel Employees, Local 2 v. Marriott Corp., 961 F.2d 1464 (9th Cir. 1992) 9
IBEW, Local 481 v. Signcraft, Inc., 864 F.2d 499 (7th Cir. 1988) 19
Intern. Broth. of Teamsters v. Southwest Airlines, 875 F.2d 1129 (5th Cir. 1989) 12

TABLE OF AUTHORITIES—Continued

Page

Kaiser Steel v. Mullins, 455 U.S. 72 (1982) 28
Katzenbach v. McClung, 379 U.S. 294 (1964) 28
Kozera v. Westchester-Fairfield Chapter, 909 F.2d 48 (2nd Cir. 1990) 8
Local Union 1395, International Brotherhood of Electrical Workers, 797 F.2d 1027 (D.C. Cir. 1986) 9
Mack Trucks, Inc. v. Int'l Union, UAW, 856 F.2d 579 (3rd Cir. 1988) *cert. denied*, 489 U.S. 1054 (1989) 3, 11
McNally Pittsburg, Inc. v. Int'l Iron Workers, 812 F.2d 615 (10th Cir. 1987) 19
Miller v. California Pacific Medical Center, 19 F.3d 449 (9th Cir. 1994) 12
Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) 26
NLRB v. Burns Security Services, 406 U.S. 272 (1972) 12
NLRB v. C & C Plywood, 385 U.S. 432 (1967) 14
NLRB v. Americana Healthcare Center, 782 F.2d 941 (11th Cir. 1986) 9
Operating Engineers v. Wilson, 915 F.2d 535 (9th Cir. 1990), *cert. denied*, 505 U.S. 1212 (1992) 17
Oubre v. Entergy Operations, Inc., Sup. Ct. No. 96-1291 (Jan. 26, 1998) 27
Paperworkers v. Misco, 484 U.S. 29 (1987) 9, 26
Public Service Comm. v. Wycoff, 344 U.S. 237 (1952) 20
Retail Clerks v. Lion Dry Goods, 369 U.S. 17 (1962) 14, 26
Rozay's Transfer v. Local Freight Drivers, Local 208, 850 F.2d 1321 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) 10, 19
San Diego Building Trades v. Garmon, 359 U.S. 236 (1959) 7, 24, 25
Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667 (1950) 20, 23
Smith v. Evening News, 371 U.S. 195 (1962) 7, 16, 17, 25, 27, 29

TABLE OF AUTHORITIES—Continued

	Page
Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911)	12
Steelworkers v. Rawson, 495 U.S. 362 (1990)	18
Super Tire Engineering v. McCorkle, 416 U.S. 115 (1974)	12
Teamsters Local v. Lucas Flour, 369 U.S. 95 (1962)	16, 17
Tejidos de Coamo, Inc. v. ILGWU, 22 F.2d 8 (1st Cir. 1994)	9, 18
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957)	*passim*
Warehouseman's Local 206 v. Continental Can Co., 821 F.2d 138 (9th Cir. 1987)	9
Wilton v. Seven Falls Co., 515 U.S. 277 (1995)	28
Wooddell v. International Brotherhood of Electrical Workers, 502 U.S. 93 (1991)	14, 26
Yee v. City of Escondido, 503 U.S. 519 (1992)	11

STATUTES

28 U.S.C. § 2201	15, 19
29 U.S.C. § 158(a)(5)	14
29 U.S.C. § 158(b)(3)	14
29 U.S.C. § 158(d)	14
29 U.S.C. § 185(a)	*passim*

TREATISES

Borchard, *Declaratory Judgments* (1934)	19
Calamari & Perillo, *The Law of Contracts* (3rd ed., 1987)	10
Corbin on Contracts (1952)	9, 27
Gorman, *Labor Law* (1976)	8
Restatement (Second) of Contracts (1979)	9, 10, 19, 27
Wright, Miller & Kane, Federal Practice and Procedure (2d ed. 1983)	20, 22

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

No. 97-463

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,
Petitioner,
v.
UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENTS

STATUTES INVOLVED

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

The Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, provides:

> Section 2201. Creation of remedy
>
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A (a)(10) of the Tariff Act of 1930, as determined by the administering authority), any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
> (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug and Cosmetic Act.
>
> Section 2202. Further relief
>
> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

STATEMENT OF THE CASE

1. The Petitioner, Textron Lycoming, Reciprocating Engine Division, AVCO Corporation (hereinafter "Textron") makes parts for and assembles aircraft engines. The Respondents, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 787 (hereinafter "the UAW" or "the Union") and their members have collectively bargained with Petitioner for several decades at Textron's plant in Williamsport, Pennsylvania.

Prior to negotiations for the 1994-97 contract, the UAW asked Textron whether it had plans to subcontract or otherwise transfer work currently performed by UAW members in the next three years. (Jt. App. 17). The Union also asked Textron for any written materials which it had prepared on this issue. (*Id.*) When the parties met at the first bargaining session, the UAW again specifically inquired about Textron's plans to move or transfer work. (*Id.*). In response, the Vice-President for Human Resources, Frank Ratchford, said that he had no knowledge of such plans and promised to make certain that his knowledge was correct. (Jt. App. 19-20).

During the bargaining, Textron formulated and completed a secret plan to subcontract the parts production work at the plant. (Jt. App. 18). Despite Ratchford's statement that he did not know of plans to subcontract work, and that he would ensure the truth of his representation, Ratchford did not inform the Union either that these plans were being developed or that the plans had been completed during negotiations. Nor did Textron respond to the Union's request to provide Company documents which it had concerning its plans regarding the transfer of work out of the bargaining unit. (Jt. App. 18).[1]

It was against this background that the UAW and Textron concluded collective bargaining negotiations in March 1994, without the Union raising any subcontracting issues, and signed an agreement containing, *inter alia*, a no-strike clause, which was ratified by the Union's membership at the beginning of April, 1994. (Jt. App. 18).

---

[1] Textron did state in December 1993, prior to Ratchford's statement in January, that "in the years ahead" it would examine the manufacturing process to determine whether it should "make or buy" various parts. (Pet. Br. at 4, n.2; "NLRB Documents", Tab C at 9, filed by Textron on January 12, 1998). At the time Textron made that statement, it was already formulating a plan to subcontract the production of *all parts*, a plan implemented within weeks of signing the collective bargaining agreement.

After the Union ratified the contract, the plan to subcontract parts production was formally presented to and approved by Textron's Board of Directors. (Jt. App. 18). It was announced to the UAW membership on June 2, 1994. Full implementation of this plan will cost half of the Union's membership their jobs. (*Id.*)

As result of its reasonable reliance on Textron's misrepresentations and concealments, the UAW did not seek to bargain over the subcontracting of bargaining unit work during the 1994 collective bargaining negotiations, making no contract demands on the issue. (Jt. App. 18).[2] Instead, the UAW and its members agreed to a labor contract—including a promise not to engage in a strike during the term of the contract.

2. The Complaint sought a declaration that the collective bargaining agreement was voidable because Textron made fraudulent misrepresentations during the negotiation of the collective bargaining agreement. In addition to declaratory relief, the Complaint sought damages to compensate the Union and its members and to deter similar misconduct by others. (Jt. App. 19). The UAW sued under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, relying on the Third Circuit's prior decision in *Mack Trucks, Inc. v. Intern, Union, UAW*, 856 F.2d 579 (3rd Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989).

Textron moved to dismiss for lack of subject matter jurisdiction. The Company argued that LMRA § 301 does not grant the federal courts jurisdiction unless the plaintiff alleges "a violation of" the collective bar-

[2] While it is impossible to state for certain what would have happened had Textron disclosed its plans, the Union would have made demands to protect the wages and incomes of its members subject to layoff. (Jt. App. 19) And, the Union may well have achieved some of its goals in this respect because it would have had the power to threaten to strike in support of its demands before it agreed to a labor contract with a "no-strike" clause.

gaining agreement, and that the UAW's only remedy for the conduct complained of was before the National Labor Relations Board. Holding that the UAW's claims were "independent of the terms of the contract," the District Court dismissed the case because the "remedy to render the contract voidable" did not alter "the fundamental nature of the suit as one based upon bad faith." (Pet. App. 17a-18a).

The Court of Appeals overturned the decision of the District Court. First, relying on the well established principle that traditional pre-emption doctrines will not foreclose federal court review of issues properly raised under § 301, the Court rejected Textron's argument that this matter was within the exclusive jurisdiction of the NLRB. Next, relying on its holding in *Mack Trucks*, the Court of Appeals held that § 301 grants federal jurisdiction over cases containing issues of contract formation including jurisdiction to provide the remedy of declaratory relief over contract formation issues since the resolution of the kind of fraud claim raised in this case was "integral to the question of whether the agreement is enforceable." (Pet. App. 12a).

Having thus disposed of the jurisdictional issue raised by Textron, the Third Circuit remanded the case for further proceedings in order to determine whether, in fact, the contract was the product of fraudulent misrepresentations and, if so, what remedy would be appropriate.[3] The

[3] The UAW has also pursued its remedies under the National Labor Relations Act. In November 1994, the UAW filed a charge alleging that Textron had failed to bargain over the decision to subcontract work and had failed to provide information after the Company announced its decision in June 1994. In October 1995, the UAW filed an amended charge based on documents obtained from the Company in June 1995, alleging that Textron had engaged in fraudulent conduct when the Company acted as if it had no plans to subcontract work at the bargaining table even as it was formu-

court also directed the trial court to consider and rule on Textron's argument that this dispute was subject to the grievance and arbitration procedure in the contract.

SUMMARY OF ARGUMENT

Since the decision in *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957), this Court has "understood" § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, as a "congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis Chalmers v. Lueck*, 471 U.S. 202, 209 (1985). In developing a uniform body of federal labor contract law, the courts must frequently examine issue which bear upon the formation and existence *vel non* of a contract. The question presented by the merits of the UAW's claim in this case is whether the contract at issue was induced by fraud and, as a result, can be voided by the defrauded party. The question decided by the court of appeals and presented by the *certiorari* petition is whether the federal courts have jurisdiction to consider that issue.

Textron argues that the federal courts are without authority to examine issues of contract formation absent a contract violation. Under the regime championed by Textron, a party to a putative contract would be required

---

lating and completing a plan to implement such subcontracting. ("NLRB Documents" at Tab D)

On April 30, 1996, several months after the filing of the Complaint in this case, Region Four of the NLRB issued a complaint in *Textron Lycoming*, Case No. 4-CA-23285. The case was set for trial on April 17, 1997. Two weeks before trial, Textron made an offer to NLRB Region Four to unilaterally settle the case, which the UAW has opposed. As of this date, the UAW's objections to the proposed unilateral settlement are still pending before Region Four. The unfair labor practices trial has been postponed pending the decision of the Region whether to accept the proposed settlement.

to breach that contract in order to obtain a judicial determination regarding its validity. Forcing such breaches of contract would undermine the strong federal labor policy favoring the "access to a neutral forum for the peaceful resolution of disputes," *Groves v. Ring Screw Works*, 498 U.S. 168, 173 (1990), and the Congressional determination to "leave the enforcement of collective bargaining agreements to the 'usual processes of law,'" *Dowd Box Co. v. Courtney*, 368 U.S. 502, 513 (1962), by requiring parties commit breaches of contract to ascertain their legal rights. The Declaratory Judgment Act allows for federal court lawsuits that avoid the costly—and unnecessary—impact of such contract breaches. Indeed, the entire purpose of that Act is permit access to federal courts to determine the rights of parties without requiring that one party first commit a damaging wrong. Precisely for this reason, the § 301 Congress contemplated labor contract declaratory judgment suits.

In apparent recognition of the strength of the arguments outlined above, Textron places primary reliance on an argument that federal jurisdiction here is pre-empted by application of the doctrine first announced in *San Diego Trades Council v. Garmon*, 359 U.S. 236 (1959). But Textron's argument in this regard ignores the well settled rulings that the *Garmon* doctrine is simply inapplicable to suits brought under § 301, even "where the alleged conduct of the employer . . . is an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Smith v. Evening News*, 371 U.S. 195, 197 (1962).

In short, § 301 effectuates the "congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law," *Smith v. Evening News*, 371 U.S. at 200, which "must [be] fashion[ed] from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456. And, like any body of contract law, the federal common law of labor contracts—when coupled with the Declaratory

Judgment Act—plainly permits the federal courts to inquire into the validity of a putative contract without requiring that one party first commit a contract breach.

ARGUMENT

1. *The Federal Common Law of Labor Contracts.* Section 301 of the Labor Management Relations Act (LMRA) provides for "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . ." 29 U.S.C. § 185(a). When a union or employer brings suit under this provision alleging that the other party to a collective bargaining agreement has violated the agreement, such a suit proceeds under the federal common law of labor contracts generated from § 301. *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957).

The § 301 body of federal labor contract common law —like the body of contract common law generally—recognizes that to determine issues arising under a collective bargaining agreement, it is often necessary to decide whether there was a valid agreement or contract clause in the first place. Judge Oakes put the matter succinctly in *Kozera v. Westchester-Fairfield Elec. Contractors*, 909 F.2d 48, 52 (2d Cir. 1990), *cert. denied*, 498 U.S. 1084 (1991):

> It is axiomatic . . . that to determine whether a breach of agreement has occurred, a court must necessarily determine whether a valid agreement exists in the first place. Ancillary to determining the merits of an action for breach of a collective bargaining agreement, therefore, is the power to declare a purported agreement either invalid or binding.

The § 301 common law of labor contracts, therefore, like the common law of contracts generally, encompasses doctrines addressed to contractual validity or enforceability questions. *See* Gorman, *Labor Law* § 9, pp. 563-564 (1976) ("Existence of a Contract"). Among the con-

tract formation and validity issues routinely decided in § 301 cases are the following: whether a party's bargaining agent had authority to enter into an agreement, *Dowd Box Co. v. Courtney*, 368 U.S. 502, 504 (1962); whether there has been a meeting of minds sufficient to form a contract, *B. Brooks, Inc. v. Int'l Ladies' Garment Wkrs. Union*, 835 F.2d 1164, 1168 (6th Cir. 1987); whether there has been an offer and an acceptance sufficient to form a contract, *Warehousemen's Local 206 v. Continental Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987); whether an agreement is no longer in force after its expiration date, *Tejidos de Coamo, Inc. v. ILGWU*, 22 F.3d 8, 15 (1st Cir. 1994); whether the agreement is unenforceably vague, *Hotel Employees, Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1466-67 (9th Cir. 1992); whether there was mutual assent as to the coverage of the provision at issue, *Local Union 1395, International Brotherhood of Electrical Workers*, 797 F.2d 1027, 1036 (D.C. Cir. 1986); whether the provision at issue was omitted from the written agreement by mutual mistake, *NLRB v. Americana Healthcare Center*, 782 F.2d 941, 945 (11th Cir. 1986); whether the contract or a particular provision thereof is void for violation of public policy, *Paperworkers v. Misco*, 484 U.S. 29 (1987); and, as in this case, whether the contract is voidable because of fraud by the other party in inducing agreement. *See generally Restatement (Second) of Contracts* § 7 ("Voidable Contracts"), § 8 ("Unenforceable Contracts"), § 17 ("Requirements of a Bargain"), § 17 Comment c ("Meeting of the Minds"), § 18 ("Manifestation of Mutual Assent"), § 22 ("Mode of Assent: Offer and Acceptance"), § 151 ("When Mistake of Both Parties Makes a Contract Voidable"), § 155 ("When Mistake of Both Parties as to Written Expression Justifies Reformation"), & § 178 ("When a Term Is Unenforceable on Grounds of Public Policy") (1979); *Corbin on Contracts* (1952) § 9 ("Agreement Defined"), § 95

("Vagueness and Indefiniteness of Terms"), & § 1229 (" 'Discharge,' 'Termination' and 'Cancellation' ") (1952).

2. *The Sole Question Presented in this Case.* The issue of whether the labor contract here was voidable for fraud in the inducement was raised in a declaratory judgment action. And, as stated in the Petition for a Writ of Certiorari, the sole question decided below and presented here is the threshold question of:

> Whether Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 . . . permits a union to sue in federal court to *declare* a collective bargaining agreement *voidable* in the absence of any alleged violation of the agreement [Pet i (emphasis supplied).][4]

[4] In addition to seeking a declaration that the labor contract was "voidable at the option of Plaintiff UAW," the complaint sought "compensatory and punitive damages . . . for the harm caused by the Defendant's misrepresentations and concealments and to deter other Employers from similar conduct." Jt. App. 19. As the complaint did not allege that the UAW had exercised its asserted option of voiding the collective bargaining agreement, the damage claim obviously does not turn on the issue of voidability, but rather rests solely on the allegation that the Company was guilty of fraud.

A fraud claim of this sort has traditionally sounded in tort, rather than contract. *See Restatement (Second) of Contracts* p. 425 ("tort law imposes liability in damages for misrepresentation, while contract law does not"). *See generally* Calamari & Perillo, *The Law of Contracts* § 9-23 373 (1987) (some states now allow both a contract action for recission and a tort action for compensatory damages). Whether or not § 301 provides jurisdiction over damage actions concerning the negotiation of collective bargaining agreements of a kind that has traditionally sounded in tort rather than contract is a substantial legal issue not decided by the court of appeals or encompassed within the question presented in the petition for certiorari. *Compare Rozay's Transfer v. Local Freight Drivers*, 850 F.2d 1321, 1334-1336 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) (holding, after substantial discussion, that § 301 permits suits for "noncontractual relief," including "tort-like, make-whole remedies").

The court of appeals did not even mention, much less address, the damage claim pled in the complaint, or any issue concerning whether

In other words, the issue raised by this case is whether, under § 301, a party to a collective bargaining agreement who believes that a putative agreement or a provision thereof is void or voidable for reasons such as those listed above can obtain a judicial declaration of the rights and legal relations resulting from the putative agreement without first violating the terms of the agreement and awaiting an enforcement action that could lead to an award of damages for breach of contract.

The court of appeals answered this question in the affirmative, relying on its holding in *Mack Trucks, Inc. v. International Union, UAW*, 856 F.2d 579, 590 (3d Cir. 1988), *cert. denied*, 489 U.S. 1054 (1989), that "§ 301(a) confers jurisdiction on a district court to determine the existence of a collective bargaining agreement." While *Mack Trucks* involved an action by an employer for a declaration that a new collective bargaining agreement was "valid and enforceable," Pet. App. 7a, the court

there is jurisdiction under § 301 to award such tort-like damages. Rather, the Court of Appeals determined only that, because there is § 301 jurisdiction to provide declaratory relief, "[t]he order of the district court dismissing the complaint for lack of subject matter jurisdiction will be reversed and the case remanded for further proceedings." Pet. App. 13a. *See id.* at 4a ("The UAW's complaint . . . sought a declaratory judgment that the collective bargaining agreement was voidable at the UAW's option because it was secured by fraud in the inducement."); *id.* at 10a (characterizing this suit as "one . . . seeking declaratory judgment that an agreement is *voidable* at the will of a party").

Because no question concerning § 301 jurisdiction to award tort-like damages for misrepresentation in the negotiation of a collective bargaining agreement was addressed by the court of appeals or fairly included within the question presented, only the question of the availability of declaratory relief regarding the voidability of a collective bargaining agreement is before this Court. *Yee v. City of Escondido*, 503 U.S. 519, 536-67 (1992); *Blessing v. Freestone*, 117 S. Ct. 1353, 1359 n.3 (1997). For that reason, Textron's arguments based upon the prayer for damages in the complaint (Pet. Br. at 34-36) are irrelevant to the issue actually before the Court in this case.

of appeals in this case could "see no reason why the rationale behind *Mack Trucks*—that by enacting § 301(a) Congress intended that the courts resolve disputes *of a contractual nature*, including disputes over the agreement's very existence—does not also apply when the party who filed suit seeks a *declaration* that the agreement is not enforceable," *id.* at 9a-10a (emphasis added).[5]

---

[5] As Textron correctly notes, the fact that the collective bargaining agreement expired on April 4, 197 does not make the issue presented by the petition for certiorari moot, because "[t]he expiration of the agreement has not eliminated the dispute between the parties." Pet. 4 n.4. *See also* Pet. Br. 4 n.3. The UAW is on strike against Textron, and the negotiations over a new collective bargaining agreement will undoubtedly be affected by resolution of whether the expired agreement was induced by fraud such that the contract was voidable, even though not actually voided during its term. *See Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 124-125 (1974). *See also International Broth. of Teamsters v. Southwest Airlines*, 875 F.2d 1129, 1132 (5th Cir. 1989), *cert. denied*, 493 U.S. 1043 (1990) ("The special treatment due labor questions has been recognized several times by the Supreme Court.").

The issue presented by the certiorari petition is, moreover, not moot for the additional reason that this issue is "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911). And, " 'Evading review' means evading Supreme Court review." *Miller v. California Pacific Medical Center*, 19 F.3d 449, 453 (9th Cir. 1994).

The UAW is party to some 2,200 collective bargaining agreements, 15 of which are with Textron. Like the agreement in this case, the vast majority of these agreements are for a three year term. *See General Cable Corp.*, 139 NLRB 1123, 1127 (1962) (adopting a rule allowing contracts to bar representation elections for no more than three years, based in large part on the great number of three year collective bargaining agreements). *See also NLRB v. Burns Security Services*, 406 U.S. 272, 290 n.12 (1972).

By definition, a claim that a contract is voidable because it was induced by fraud can arise only after the contract has been entered; indeed, the fact that Textron had made misrepresentations during bargaining only came to the UAW's attention in June 1995, a full year into the contract term. It is virtually impossible for such a

3. *The Company's Position.* Textron's position on the question decided below and presented here is, as we understand it, that the National Labor Relations Act, *not* the § 301 common law of contracts, governs all issues relating to the process by which collective bargaining agreements are reached. And, for that reason, according to the Company, court jurisdiction under § 301 is limited to enforcing collective bargaining agreements where a breach has been alleged and reaches contract formation issues only as "defenses arising under the NLRA," Pet. Br. at 19, where deciding issues otherwise within the Labor Board's primary jurisdiction is necessary to determine a breach of contract case, Pet. Br. at 19 ("the Taft-Hartley Act continued generally the exclusive jurisdiction of the Board over the collective bargaining process and gave the courts jurisdiction to enforce the agreements").

As the cases cited above illustrate, however, the federal common law of collective bargaining agreements has been widely understood as a *full* body of contract law encompassing *all* traditional contract law issues, many of which are in no way addressed by the provisions of the NLRA governing the bargaining process. 29 U.S.C.

---

claim to be brought to this Court within the three year term typical of collective bargaining agreements.

At the same time, the large number of collective bargaining agreements negotiated in three year cycles by the UAW makes it virtually certain that the question of whether the Union can secure a judicial declaration of its contract right to void an agreement for fraud in the inducement will arise again. *See Honig v. Doe*, 484 U.S. 305, 318-319 n.6 (1988); *Burlington Northern R. Co. v. Maintenance of Way Employees*, 481 U.S. 429, 436 n.4 (1987).

Finally, as noted above, p. 10 n.4, *supra*, even if the declaratory judgment claim presented by the complaint is moot, the wholly separate damage claim is not moot and has not been addressed by the court below. Therefore, even if the Court were to dismiss the writ as improvidently granted, the proper course would be to remand this case to the court of appeals as decide whether there is § 301 jurisdiction to award damages on a quasi-contractual claim for fraud in the inducement.

§§ 158(a)(5), (b)(3) & (d).[6] Equally to the point, § 301 covers any employment-related agreement between an employer and a union, whether or not formation of the agreement is covered by the NLRA duty to bargain collectively, *Retail Clerks v. Lion Dry Goods*, 369 U.S. 17, 25-28 (1962) (agreement between employer and union representing some, but not a majority, of the employer's workers); *Chemical Workers v. Pittsburgh Plate Glass*, 404 U.S. 157, 180 n.20 (1971) (agreement covering retired workers), as well as agreements between labor organizations, *Woddell v. International Brotherhood of Electrical Workers*, 502 U.S. 93 (1991). And, such agreements are *never* within the NLRA duty to bargain collectively.[7]

[6] Section 8(a)(5) makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title," 29 U.S.C. § 158(a)(5); § 8(b)(3) provides that it is an unfair labor practice for a labor organization "to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title," 29 U.S.C. § 158(b)(3); § 8(d) defines the duty to bargain collectively as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . and the execution of a written contract incorporating any agreement reached," 29 U.S.C. § 158(d).

The Board is occasionally called upon to interpret collective bargaining agreements, especially in cases involving alleged refusals to bargain. *See NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967). In such cases, however, the Board does "not construe[] a labor agreement to determine the extent of the contractual rights," but "merely [to] enforce a statutory right which Congress considered necessary to allow labor and management to get on with process of reaching fair terms and conditions of employment . . . ." *Id.* at 428.

[7] Nothing demonstrates the limited authority of the NLRB in this area so well as the fact that, while, for purposes of defending this lawsuit, Textron insists the UAW's fraud-in-the-inducement claim can be presented to *only* the NLRB, the Company has argued to the Labor Board that the alleged fraud is *not* subject to regulation by the NLRB because it concerns a nonmandatory subject of bargaining. Pet. Br. 34 & n.22.

In short, the notion that the language of § 301 reflects a neat division of responsibility for contract-related questions between the NLRB and the courts will not bear the briefest scrutiny. Rather, inquiry into the scope of jurisdiction under § 301 must begin with the general principle that has been the underpinning of § 301 jurisprudence from *Lincoln Mills* forward—that § 301 provides for creation of a comprehensive federal common law of contracts enforceable in the federal courts, not for a truncated common law that requires federal courts to interpret and enforce the terms of collective bargaining agreements without any regard for their validity.

That being so, it ineluctably follows that as *a general matter* district courts have jurisdiction by reason of § 301 and the Declaratory Judgment Act, 28 U.S.C. § 2201, to declare whether collective bargaining agreements are void or voidable at the instance of either party to the agreement. And, after elaborating on that point, we conclude by considering whether there is anything about the particular voidability claim here that displaces the usual jurisdiction of the courts under § 301 in favor of exclusive NLRB jurisdiction.

4. *This Court's Interpretation of LMRA § 301.* Textron's argument rests on a simple minded approach to the interpretation of LMRA § 301. Starting from the premise that the statutory "language is simple and straightforward: . . . authoriz[ing] the federal courts to hear '[s]uits for violation of contracts between an employer and a labor organization,'" the Company infers that § 301 "does not confer jurisdiction over suits that do not allege violation of a collective bargaining agreement . . . ." Pet. Br. 8. Following this Boolean logic to its end, Textron reaches the conclusion that "[s]ince the union does not allege the violation of the agreement here,

Section 301(a) is plainly inapplicable." *Id.* *See also id.* at 20-22.

The first flaw in Textron's argument is that this Court has not treated the language of LMRA § 301 as "simple and straightforward." To the contrary, since its decision in *Textile Workers v. Lincoln Mills, supra*, the Court has "understood § 301 as a congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." *Allis Chalmers v. Lueck*, 471 U.S. 202, 209 (1985).

As Justice Frankfurter noted, in an opinion relied upon in Textron's certiorari petition, Pet. 8, "If the section is given the meaning its language spontaneously yields, it would seem clear that all it does is to give procedural directions to the federal courts." *Association of Westinghouse Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 443 (1955) (plurality opinion). *See* Pet. Br. 15-16 (suggesting that § 301 is a mere procedural device). However, as Justice Frankfurter recognized quite clearly in his dissenting opinion in *Lincoln Mills*, 353 U.S. at 461-462, the Court ultimately rejected that reading of § 301. *See Smith v. Evening News Ass'n*, 371 U.S. 195, 199 (1962) (discussing *Lincoln Mills'* rejection of the *Westinghouse* plurality's view).

In so doing, the *Lincoln Mills* Court adopted the view "that § 301(a) is more than jurisdictional—that it authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements. . . ." 353 U.S. at 450-51 (footnote omitted). Accordingly, the Court "conclude[d] that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456.

In *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), the Court emphasized that "[c]omprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring

issues raised in suits of a kind covered by § 301 to be decided according to the precepts of federal labor policy." While holding that "incompatible doctrines of local law must give way to principles of federal labor law," *id.* at 102, the *Lucas Flour* Court made clear that in "fashion-[ing], from the policy of our national labor laws, a body of federal law for the enforcement of collective bargaining agreements," *id.* at 103, the federal courts should remain attentive to "accepted principles of traditional contract law," *id.* at 105.

As understood since *Lincoln Mills*, then, § 301 reflects a "congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith v. Evening News Ass'n*, 371 U.S. at 20. This "polic[y] require[s] that 'the relationships created by [a collective bargaining] agreement' be defined by application of 'an evolving federal common law grounded in national labor policy.'" *Allis-Chalmers v. Lueck*, 471 U.S. at 210-211, quoting *Bowen v. United States Postal Service*, 459 U.S. 212, 224-225 (1983). Consequently, "§ 301 is not to be given a narrow reading." *Smith v. Evening News*, 371 U.S. at 199. And, the Court has held that "the pre-emptive effect of § 301 must extend beyond suits alleging contract violations." *Allis-Chalmers v. Lueck*, 471 U.S. at 210. There is no reason to believe that the state law that is thus displaced, which would otherwise define "the relationships created by [a collective bargaining] agreement," is not replaced by federal law under § 301 and every reason to believe that it is.[8]

---

[8] The Ninth Circuit's holding that *state law* claims for fraud in the inducement are not preempted by § 301, *Operating Engineers Pension Trust v. Wilson*, 915 F.2d 535, 538-539 (9th Cir. 1990), *cert. denied*, 505 U.S. 535 (1991), is contrary to the decisions of this Court, discussed in text, which hold that *"only* the *federal* law fashioned by the courts under § 301 governs the *interpretation and*

5. *Labor Contract Declaratory Judgment Suits.* (a) The § 301 Congress contemplated federal court jurisdiction over labor contract declaratory judgment suits. Representative Hartley, the sponsor of the 1947 House bill that contained "the substantial equivalent of the present § 301," *Lincoln Mills*, 353 U.S. at 455, made that plain in embracing the following description of that provision as "absolutely correct," *id.* at 456:

> [T]he section dealing with equal responsibility under collective bargaining contracts in . . . proceedings in district courts contemplates not only the ordinary lawsuits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances; in other words, proceedings could, for example, be brought by the employers, the labor organizations, or interested individual employees under the Declaratory Judgment Act in order to secure declarations from the Court of legal rights under the contract. [*Id.*]

Given this clear statement of Congressional intent, it requires no great feat of "judicial inventiveness," *Lincoln Mills*, 353 U.S. at 457, to conclude that a "suit . . . for declaratory judgment as to contract obligations arises under § 301," *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 (1983), describing *Black-Clawson Co. v. Machinists Lodge 335*, 313 F.2d 179, 181-182 (2d Cir. 1962)[9]

---

application of collective-bargaining agreements." *Steelworkers v. Rawson*, 495 U.S. 362, 368 (1990) (emphasis supplied; citations omitted). Consequently, "though state courts have concurrent jurisdiction over *controversies involving collective-bargaining agreements*, state courts must apply *federal* law in deciding those claims. . . ." *Id.* (emphasis supplied).

[9] In addition to the Third Circuit, the First, Second, Fifth, Seventh, and Tenth Circuits have all held that an employer or a union may, without alleging a contract breach, seek a declaratory judgment regarding thier legal obligations under the contract. *Tejidos de Coamo v. ILGWU*, 22 F.2d 8 (1st Cir. 1994) (considering suit by employer seeking a declaratory judgment that it did not have to arbitrate certain grievances which allegedly arose after the expiration of the contract); *Black-Clawson Co. v. Int'l Ass'n of Machinists Lodge 355, supra, El Paso Bldg. & Constr. Trades Council v. El Paso Chapter Assoc. Gen. Contractors*, 376 F.2d 797 (5th Cir. 1967); *International Bhd. of Electrical Workers v. Signcraft, Inc.*, 864 F.2d 499, 502 (7th Cir. 1988); *McNally Pittsburgh Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 619 (10th Cir. 1987). *See also Rozay's Transfer v. Local Freight Drivers, Local 208*, 850 F.2d 1326 (9th Cir. 1988), *cert. denied*, 490 U.S. 1030 (1989) (a party may sue for fraud in the inducement without alleging a breach of contract). Thus, Textron could not be more wrong in asserting that "the majority of courts to have considered the issue have concluded that Section 301 is limited to suits for violation of collective bargaining agreements." Pet. Br. 23.

Indeed, such a conclusion would seem to follow from this Court's observations that § 301 reflects "a strong presumption that favors access to a neutral forum for the peaceful resolution of disputes," *Groves v. Ring Screw Works*, 498 U.S. 168, 173 (1990), and a Congressional determination "to leave the enforcement of collective bargaining agreements 'to the usual processes of the law.'" *Dowd Box Co. v. Courtney*, 368 U.S. at 513. For "[d]eclaratory judgment play an important . . . role in the resolution of disputes arising out of contracts." *Restatement (Second) of Contracts* p. 107, as we now show.

(b) The federal Declaratory Judgment Act provides:

> In a case of actual controversy within its jurisdiction . . . any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any intrested party seeking such declaration, whether or not further relief is or could be sought. [28 U.S.C. § 2201(a)]

By its "nature . . . the declaratory remedy . . . was designed to permit adjudication of either party's claims." *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. at 28 n. 19, quoting Borchard, *Declaratory Judgments* 298-300 (1934). Thus, declaratory relief permits a "plaintiff . . . to ward off possible action

of the petitioners by seeking a declaratory judgment to the effect that he will have a good defense when and if that cause of action is asserted." *Public Service Commission v. Wycoff*, 344 U.S. 237, 248 (1952). In so doing, the Act "permits actual controversies to be settled before they ripen into violations of law or a breach of contractual duty," thereby "minimiz[ing] the danger of avoidable loss and the unnecessary accrual of damages." 10A Wright, Miller & Kane, *Federal Practice and Procedure*, § 2751, at 569-71 (2d ed. 1983).

The Declaratory Judgment Act, to be sure, "includes certain limitations on the jurisdiction of federal district courts to entertain declaratory judgment suits." *Franchise Tax Board*, 463 U.S. at 18: The Act does not permit a defendant fundamentally to recast a lawsuit by bringing in federal court an anticipatory action where any damages or other enforcement action would go forward in state court or before an administrative agency. *Id.* at 16-19; *Skelly Oil Co. v. Phillips Petroleum*, 339 U.S. 667, 673-674 (1950); *Public Utilities Commission v. Wycoff*, 344 U.S. at 246-247.

Consequently, as a general matter, "[w]here the complaint in an action for declaratory judgment seeks in essence to assert a defense" to a feared enforcement suit, "the character of the threatened action . . . determine[s] whether there is federal-question jurisdiction in the District Court." *Public Service Commission v. Wycoff*, 344 U.S. at 248. Applying this principle, "[f]ederal courts have regularly taken original jurisisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question" cognizable in federal court. *Franchise Tax Board*, 463 U.S. at 19. That is undoubtedly true here.

Had the UAW in fact announced its intention to strike over the subcontracting dispute that is at the core of this lawsuit, a suit by Textron to enforce the no-strike clause

could have been brought in federal court under § 301 and would have been governed as a substantive matter by the § 301 federal common law of contracts.[10] Equally to the point, in such an action the UAW's defense—that the no-strike clause was voidable along with the rest of the agreement because of Textron's fraud in the inducement in the negotiations that led to the agreement—would itself be governed by the § 301 federal common law contract principles governing recission for fraudulent inducement. *See* pp. 27-28, *infra*, concerning the substantive development of the federal common law of fraudulent inducement.

In other words, an enforcement case by Textron could raise exactly the same legal issues involved in this case, and those issues are § 301 federal labor contract common law issues committed to the federal courts, and not state law issues committed exclusively to state courts, or pure NLRA issues committed exclusively to the NLRB, for determination. Permitting the present suit for declaratory relief to go forward, then, would in no way foster a end-run around the law or the forum in which any enforcement action would go forward, but would simply allow the same issues to be decided between the same parties in the same forum that would determine a § 301 contract enforcement suit based on precisely the same facts and legal contentions.

Further, in the present context, the Declaratory Judgment Act's purpose to "permit actual controversies to be settled before they ripen into violations of law or a breach

---

[10] The Union would most likely not be able to contend that Textron is required to take such a claim to arbitration, because the contractual grievance procedure does not appear to be open to employer-initiated grievances. *Compare* Jt. App. 7 *with Avco Corp. v. Local Union 787, UAW*, 459 F.2d 968, 970 (3d Cir. 1972). In any event, the question whether an issue arising under the federal common law of contracts should be decided in the first instance by an arbitrator or by the courts is not a jurisdictional issue but a merits question, decided by a court determination of the intentions of the parties to the collective bargaining agreement.

of contractual duty," 10A *Federal Practice and Procedure*, § 2751, at 569-71 (2d ed. 1983), is of particular importance. Once the UAW concluded that the agreement had been fraudulently induced and was void, an alternative course of action the Union could have taken would have been to take the position that the entire agreement was void and to strike to obtain a more favorable subcontracting clause. That course of action would undoubtedly have injured Textron's business and led to a damages claim against the Union. Requiring the UAW to strike, causing possible injury to both itself and the employer, in order to obtain a judicial determination of its right under the § 301 federal common law of labor contracts to void an agreement that is the product of fraud in the inducement is entirely inconsistent with the goal of the Declaratory Judgment Act to "minimize the danger of avoidable loss and the unnecessary accrual of damages." *Id.* And mandating such a course of action as a prerequisite to federal court jurisdiction is inconsistent as well with this Court's pronouncement that "under § 301 . . . there is a strong presumption that favors access to a neutral forum for the peaceful resolution of disputes." *Groves v. Ring Screw Works, supra*, 498 U.S. at 173.

(c) Textron's brief bypasses the Declaratory Judgment Act, through the device of suggesting that § 301 was cast at it was precisely to manifest a Congressional intention to preclude declaratory relief that would otherwise be available in a suit to determine purely federal issues ordinarily committed to the federal courts for decision. Pet. Br. 31-32.

But the legislative history of the LMRA § 301 is squarely to the contrary, and shows that Congress had no such odd intent but rather a far more rational—and definite—intent to permit the Declaratory Judgment Act its usual role. *See*, p. 18, *supra*. Indeed, as we have noted, that history was specifically relied upon in *Lincoln Mills* as indicating that Congress intended in § 301 to provide for substantive as well as procedural law governing collective bargaining agreements. *See* 353 U.S. at 456.

As a secondary point, Textron invokes *Skelly Oil* for the proposition that "the declaratory judgment remedy does not . . . expand the subject matter jurisdiction of the federal courts." Pet. Br. at 32. That proposition avails Textron nothing here. The *Skelly Oil* Court stated, "When concerned as we are with the power of the inferior federal courts to entertain litigation within the restricted area to which the Constitution and Acts of Congress confine them, 'jurisdiction' means *the kinds of issues which give right of entrance to federal courts.*" 339 U.S. at 666. (emphasis supplied)

In this case, *all* the legal issues concern the "limited subject matters which . . . Congress . . . authorized the District Courts to adjudicate," *id.*, namely, issues arising under the § 301 federal common law governing labor agreements.[11] And, of course, the Declaratory Judgment Act *does* permit the adjudication of disputes otherwise properly in federal court, as defined by the issues and the parties, anticipatorily, as long as there is a case or controversy sufficient to meet Article III standards. Thus, where, as here, *all* the legal issues concern matters the federal courts are authorized to adjudicate, and the dispute is between the very same parties who could adjudicate the same federal issues in federal court in an enforcement action, the Declaratory Judgment Act provides a proper basis for the action. Nothing in *Skelly Oil* is to the contrary.

Our analysis and conclusion is foreshadowed by the Court's *Franchise Tax Board* decision. There the Court held improper a declaratory judgment action by a state under ERISA, 29 U.S.C. § 1132(a), as to whether a state tax collection action could go forward, because ERISA "neither creates nor expressly denies any cause of action in favor of state governments, to enforce tax levies or for any other purpose," and "does not purport to reach every question relating to plans covered by ERISA." *Id.* at 25.

---

[11] Indeed, there may well be jurisdiction over this case under 28 U.S.C. § 1331 as well as under § 301, since the case "arises under" the federal common law of contract.

At the same time, the Court made clear that LMRA § 301 is quite different in its reach, and that, because § 301 *does* supply sufficiently comprehensive federal law to cover any suit concerning contractual obligations under a collective bargaining agreement, there is no basis for precluding declaratory relief in a suit between the very same parties who would litigate an enforcement action. *Id.*, at 25 n. 28 (contrasting § 301(a) with ERISA § 502(a) because § 301(a) applies to *all* "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce," without regard to the identity of the parties to the suit or to the nature of the contract covered, and noting in particular with approval *Black Clawson Co. v. Machinists Lodge 335*, 313 F.2d at 181-82 as holding that "declaratory judgment as to contract obligations arise under § 301.")[12]

6. *Garmon Pre-Emption and § 301 Suits.* As we noted at the outset, Textron places heavy reliance on the argument that the UAW's declaratory judgment action is barred by the *Garmon* preemption doctrine, which holds that "[w]hen an activity is arguably subject to § 7 or § 8

[12] In *Black Clawson*, an employer invoked jurisdiction under § 301 to obtain a declaration that a particular grievance was *not* subject to the arbitration provision of the collective bargaining agreement. As pleaded, the action did not allege that any violation of the agreement had occurred, but sought only to establish that *if* the employer refused to arbitrate it would not violate the agreement. *Black Clawson* upholds jurisdiction, noting that "[t]he issues of fact and law to be determined by the court are the same whether the complaint alleges a violation of the contract and requests arbitration or whether it alleges compliance with the agreement and requests protection by declaratory judgment against improper demands for arbitration." 313 F.2d at 181. And, the court of appeals added, "To hold that controversy cannot be resolved in an action brought by any of the parties empowered to do so under § 301(a) would comport neither with the streamlined procedural policy in the declaratory judgment proceeding nor with the strong concern embodied in § 301 with . . . peaceful resolution of contract disputes between labor and management." *Id.*, at 182.

of the [National Labor Relations] Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board. . . ." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959). Since fraud in collective bargaining is at least arguably a violation of the Act's prohibition of bad faith bargaining, Textron argues that the Union's claim that the agreement is voidable as a result of fraud in the inducement is within the NLRB's primary jurisdiction. Pet. Br. 11-15.

Of course, nothing is better settled than that *Garmon*'s basic rule does *not* control in the LMRA § 301 context. This Court has "refused to apply the pre-emption doctrine of the *Garmon* case" to suits brought under § 301, even "where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the National Labor Relations Board." *Smith v. Evening News, supra*, 371 U.S. at 197. The Court has explained this exception to *Garmon* as follows:

> The strong policy favoring judicial enforcement of collective-bargaining contracts was sufficiently powerful to sustain the jurisdiction of the district courts over enforcement suits even though the conduct involved was arguably or would amount to an unfair labor practice within the jurisdiction of the National Labor Relations Board. [*Groves v. Ring Screw Works*, 498 U.S. at 173, quoting *Hines v. Anchor Motor Freight*, 424 U.S. 554, 561-62 (1974).]

See also Connell Co. v. Plumbers & Steamfitters, 421 616, 626 (1975) (citing *Smith* for the proposition that "federal courts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies").[13]

[13] We note that Textron's suggestion throughout its brief that the availability of NLRA unfair labor practice jurisdiction is an effective substitute for declaratory judgment relief under the § 301 federal common law of contracts and explains Congress' supposed

At the same time, the *Garmon* rule does not lose all its force even in areas within the federal courts' § 301 jurisdiction. The Court has held that the *Smith/Connell* exception to *Garmon* does not allow a party to "circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation." *Communications Workers v. Beck*, 487 U.S. 735, 743 (1988). By the same token, a party may not circumvent the primary jurisdiction of the NLRB by casting unfair labor practice allegations as contract claims. Applying this principle, the Third Circuit in *Beverly Enterprises v. District 1199C*, 90 F.3d 93 (3d Cir. 1996), dismissed an employer brought suit "for a declaration that the union security clause in its collective bargaining agreement violates Section 8(a)(3) of the National Labor Relations Act," on the grounds that "the claim that the unions have violated Section 8(a)(3) falls squarely within the the primary jurisdiction of the Board." *Id.* at 94 & 95. *See* Pet. App. 9a n. 2. *See also Amalgamated Ass'n of Street, Electric Railway & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 292-293 (1971) (lawsuit based on dismissal from employment under union security clause "represents one of the clearest instances where the *Garmon* principle, properly understood, should operate").

---

decision to preclude such relief simply will not wash. Cases such as *Paperworkers v. Misco, supra*, for example, involving the contention that a provision of a collective bargaining agreement is void for violation of a public policy unrelated to the NLRA could not be brought to the Labor Board for resolution. Similarly, the Labor Board has no jurisdiction to determine validity questions with regard to contracts or contractual provisions that are within the reach of § 301 but involve a nonmandatory subject of bargaining; a contract between an employer and a union that is not a majority representative; or a contract between two labor organizations. *See Pipefitters, supra; Lion Dry Goods, supra; Wooddell, supra.* Nor can one party to a collective bargaining agreement invoke Labor Board jurisdiction to determine whether an agreement has expired and is no longer binding, or whether there was a mutual, good faith mistake precluding a meeting of the minds, or whether a putative agreement is too vague to be enforceable.

The instant case is well within *Smith v. Evening News'* ambit, however, and well outside its *Beck/Beverly/Lockridge* exception. The UAW's declaratory judgment claim does *not* rest on the unfair labor practice provisions of the NLRA. Rather, the Union's claim rests squarely on the *traditional well established common law of contracts rule* that, where "a party's manifestation of assent is induced by either a fraudulent or a material misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient." *Restatement (Second) of Contracts* § 164(1). *See also Corbin on Contracts* §§ 6, 146 & 228.

7. *NLRB Regulation of the Bargaining Process.* So that we do not fall into overstatement we conclude with two cautions.

First, while the § 301 federal common law of labor contracts to be developed and applied by the federal courts includes a fraud in the inducement doctrine, that does not mean that, in exercising their jurisdiction under § 301, the courts should be inattentive to the NLRB's regulation of the bargaining process. To the contrary, the "congressional policy [is to] hav[e] administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith v. Evening News*, 371 U.S. at 200. And, this requires that "the substantive law to apply in suits under § 301(a) . . . must [be] fashion[ed] from the policy of our national labor laws," *Lincoln Mills*, 353 U.S. at 456, with due regard, where appropriate, to the NLRB's articulation of that policy.

At a minimum, then, the courts in exercising jurisdiction under § 301 must take account of the NLRA rules governing the bargaining process in ruling on the merits of contract claims within the courts' jurisdiction. *See Oubre v. Entergy Operations, Inc.*, Sup. Ct. No. 96-1291 (Jan. 26, 1998). Thus, for instance, in defining what sort of conduct will be grounds for affording one party the

option of voiding the agreement, a court should be guided by any NLRB decisions bearing on the conduct in issue. It is very much to the point in this regard that Textron has not even suggested that its alleged fraud is privileged by any decision of the NLRB defining what it means to bargain in good faith. To the contrary, Textron has argued to the NLRB that its alleged fraud is *not* subject to Labor Board regulation at all, on the theory that the Company had no statutory duty to bargain at all with respect to the subject matter of the misrepresentation. Pet. Br. 34 & n. 22.

Second, while *Garmon* preemption principles do not apply, a Federal court does have *discretion* to decline to consider a declaratory judgment claim that rests primarily on alleged unfair labor practices rather than on traditional contract principles. The Declaratory Judgment Act "confer[s] on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). And, the availability of special administrative enforcement procedures is an appropriate ground for declining to entertain a claim for declaratory relief. *See Katzenbach v. McClung*, 379 U.S. 294, 296 (1964).[14]

Of course, the district court in this case did *not* exercise such discretion, but rather dismissed the UAW's complaint for lack of subject matter jurisdiction. Pet. App. 18a. In any event, this would not appear to be an appropriate

[14] In contrast, Federal courts do not have discretion to refuse to consider an unfair labor practice issue asserted as a defense to an action to enforce a labor contract. *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-85 (1982). The reason for this is that "[t]he power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in . . . federal statutes," and "[w]here the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power." *Id.* at 84, quoting *Hurd v. Hodge*, 334 U.S. 24, 34-35 (1948).

case for the district court to exercise its discretion to decline jurisdiction in favor of the NLRB. The Union's claim for declaratory relief rests squarely on a common law contract doctrine and does not invoke the NLRA's unfair labor practice provisions. Moreover, just as in *Smith v. Evening News*, 371 U.S. at 198 n. 6, "[t]he view of the National Labor Relations Board . . . is that ousting the courts of jurisdiction under § 301 in this case would not only fail to promote, but would actually obstruct, the purposes of the Labor Management Relations Act." *See* Brief for the United States, as *amicus curiae*.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted,

MARSHA S. BERZON
177 Post Street
San Francisco, CA 94104

JAMES B. COPPESS
815 16th Street, N.W.
Washington, D.C. 20006

LAURENCE GOLD
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

DANIEL W. SHERRICK
(Counsel of Record)
8000 East Jefferson Ave.
Detroit, MI 48214
(313) 926-5216

STEPHEN A. YOKICH
1757 "N" Street, N.W.
Washington, D.C. 20036

Supreme Court, U.S.
FILED
FEB 13 1998
CLERK

No. 97-463

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939

Counsel for Petitioner

20 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 15

TABLE OF AUTHORITIES

Page

Cases

Aetna Life Insurance Co. v. Haworth, 300 U.S. 227 (1937) 4

Amalgamated Association of Street, Electric Railway & Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) 13

AT&T Technologies, Inc. v. Communications Workers, 475 U.S. 643 (1986) 9

Black-Clawson Co. v. International Association of Machinists Lodge 335, 313 F.2d 179 (2d Cir. 1962) 6, 7

Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1 (1983) 3, 4, 5, 6

Garner v. Teamsters Local No. 776, 346 U.S. 485 (1953) 8, 11

Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974) 9

Green v. Mansour, 474 U.S. 64 (1985) 6

Gully v. First National Bank, 299 U.S. 109 (1936) 4

H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970) 7

Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) 13

Kaiser Steel Corp. v. Mullins, 455 U.S. 72 (1982) 9, 13

Litton Financial Printing Div. v. NLRB, 501 U.S. 190 (1991) 14

Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908) 4

National Licorice Co. v. NLRB, 309 U.S. 350 (1940) 11

Public Service Comm'n v. Wycoff Co., 344 U.S. 237 (1952) 4, 5

TABLE OF AUTHORITIES (cont'd)

Page

Retail Clerks International Association, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc., 369 U.S. 17 (1962) 2

Robinson v. Shell Oil Co., 117 S. Ct. 843 (1997) 2

Samuels v. Mackell, 401 U.S. 66 (1971) 6

San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959) 7

Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978) 11

Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667 (1950) 3, 4, 5

Smith v. Evening News Ass'n, 371 U.S. 195 (1962) 2

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 1, 7

United Association of Journeymen & Apprentices v. Local 334, United Association of Journeyman & Apprentices, 452 U.S. 615 (1981) 2

United Steelworkers v. American Manufacturing Co., 363 U.S. 564 (1960) 9

United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 9

United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 9

Waymouth Farms, Inc., 324 N.L.R.B. No. 151 (1997) 9

Wisconsin Department of Industry v. Gould, 475 U.S. 282 (1986) 11

Statutes and Rules

28 U.S.C. § 1331 5

Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 3

28 U.S.C. § 2201(a) 3

TABLE OF AUTHORITIES (cont'd)

Page

Employee Retirement Income Security Act of 1974,
29 U.S.C. § 1001 *et seq.* 5
29 U.S.C. § 1132(a)(3) 6
Labor-Management Relations Act, 29 U.S.C.
§ 141 *et seq.* 1
29 U.S.C. § 164(c)(2) 14
29 U.S.C. § 185(a) 1, 5
29 U.S.C. § 187 14
National Labor Relations Act, 29 U.S.C. § 151 *et seq.* . . . 1, 11

Miscellaneous
Black's Law Dictionary (5th ed. 1979) 3
XIX *Oxford English Dictionary* (2d ed. 1989) 3
The Random House Dictionary of the English Language (1973) 3
Webster's Third New International Dictionary of the English Language (1986) 3

REPLY BRIEF FOR PETITIONER

Petitioner demonstrated in its initial brief that Section 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. § 185(a), does not permit federal courts to entertain suits seeking to invalidate collective bargaining agreements where no violation of those agreements is alleged. This conclusion is dictated by the plain language of the section, which confers federal jurisdiction only over "[s]uits for violation of contracts," and is confirmed by the section's legislative history, its purpose, and the overall structure of federal labor law. *See* Pet. Br. at 15-31. Petitioner's brief also demonstrated alternatively that, if there were federal jurisdiction over the respondent's claim, the claim would not survive *Garmon* preemption. *See id.* at 34-38.

Neither respondent (the "union") nor the United States as *amicus curiae* casts doubt upon these conclusions. While supporting the result reached by the Third Circuit, the government appears to agree with petitioner that suits seeking to invalidate collective bargaining agreements should not be permitted where "contractual issues [are] only tangentially involved." Gov. Br. at 26-27. The government fails, however, to offer any rational basis for distinguishing between the suits to invalidate labor contracts it would prohibit and those, such as this one, that it would permit. *See id.* at 27 n.20. Moreover, neither the government nor the union is able to reconcile its interpretation of Section 301(a) with the text of the section, its purpose and history, or federal labor policy. The opposing parties also fail to explain why the union's claim should be exempted from *Garmon* preemption.

1. Notably absent from the union's brief is any analysis of the language of Section 301(a). The union does not discuss that language or otherwise attempt to reconcile its interpretation with the text of the section. Instead, it derides petitioner's concentration on the language of the statute as a "simple minded approach." Resp. Br. at 15.

The union attempts to justify its approach by reference to this Court's decision in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). In *Lincoln Mills*, the union points out, this Court interpreted Section 301 to contain a mandate for formulating a federal

common law of labor contracts despite the lack of any textual direction to do so. *See* Resp. Br. at 16. *Lincoln Mills* was, however, a very different case. Because the text of Section 301(a) did not address the question of federal common law, this Court was required to consider matters beyond the language of the statute. Here, by contrast, the question concerns the scope of federal jurisdiction under Section 301(a), a matter explicitly addressed by the statutory language.

There is no inconsistency in finding the statutory language plain in this context and uncertain in *Lincoln Mills*. As this Court noted last year, the plain meaning rule applies not only to statutes whose meaning is clear in all contexts, but also to statutes that have a "plain and unambiguous meaning *with regard to the particular dispute in the case*." *Robinson v. Shell Oil Co.*, 117 S. Ct. 843, 846 (1997) (emphasis added). Accordingly, on several occasions since *Lincoln Mills*, this Court has interpreted Section 301(a) according to the plain meaning of its language. *See United Ass'n of Journeymen & Apprentices v. Local 334, United Ass'n of Journeyman & Apprentices*, 452 U.S. 615, 619-22 (1981); *Retail Clerks Int'l Ass'n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.*, 369 U.S. 17, 25-27 (1962). Quoting this Court's decision in *Smith v. Evening News Association*, 371 U.S. 195, 199 (1962), the union also argues that Section 301(a) is "not to be given a narrow reading." Resp. Br. at 17; *accord* Gov. Br. at 10. Obviously, this does not provide any justification for ignoring the plain language of that section.

No doubt realizing the inadequacy of the union's approach, the government attempts to reconcile its interpretation of Section 301(a) with the language of the section. Focusing its analysis on the preposition "for," the government contends that "for" means "concerns." Gov. Br. at 11.[1] While this is obviously true, it begs the

[1] The government also asserts that a "suit for violation of contract" may be interpreted as a suit "intended to establish a legal right to engage in what otherwise would be a contractual violation." Gov. Br. at 11. It does not, however, explain how this barely intelligible interpretation can be derived from the ordinary understanding of the language of Section 301(a).

real question: the meaning of the preposition's object, the word "violation." Given the context, the most natural reading of the word "violation" is the "breach or infringement of a contractual duty."[2] Although the government's brief is less than clear on this point, it apparently interprets "violation" to encompass not only breaches of contract, but also the rights of the parties under hypothetical future circumstances. Not surprisingly, it does not even begin to explain how this awkward and strained interpretation comports with either ordinary usage of the word "violation" or the context in which that word is used in Section 301(a). Congress did not provide jurisdiction over suits concerning the "effectiveness of collective bargaining agreements" or suits "relating to" collective bargaining agreements. Moreover, this Court has "never intimated that any action merely relating to a contract within the coverage of § 301 arises exclusively under that section." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1983).

In short, the meaning of Section 301(a) is plain, and no further judicial inquiry is necessary.

2. Unable to find any plausible support in the language of Section 301(a), both the union and the United States rely primarily upon the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, as expanding the jurisdiction of the federal courts to cover suits to invalidate collective bargaining agreements. *See* Resp. Br. at 18-24; Gov. Br. at 10-17. This reliance is misplaced. The Declaratory Judgment Act simply authorizes declaratory relief in cases "within [the] jurisdiction" of the federal courts. 28 U.S.C. § 2201(a). It has therefore long been settled that the Act "enlarged the range of remedies available in federal courts but did not extend their jurisdiction." *Skelly Oil Co. v. Phillips*

[2] *See, e.g., Black's Law Dictionary* 1408 (5th ed. 1979) (defining "violation" as a "breach of right, duty or law"); XIX *Oxford English Dictionary* 653 (2d ed. 1989) ("Infringement or breach"); *The Random House Dictionary of the English Language* 1594 (1973) ("a breach, infringement, or transgression as of a law, rule, or promise"); *Webster's Third New International Dictionary of the English Language* 2554 (1986) (synonymous with breach; "an infringement or transgression").

Petroleum Co., 339 U.S. 667, 671 (1950). The "operation of the Declaratory Judgment Act is procedural only," *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937), and the subject matter jurisdiction of the federal courts "was not altered by the Declaratory Judgment Act." *Skelly Oil*, 339 U.S. at 671.

Federal jurisdiction cannot be based upon the federal nature of the defense raised by the union. It is well-settled under the well-pleaded complaint rule that federal jurisdiction cannot be based upon the federal nature of a defense to a coercive action. *See, e.g., Gully v. First Nat'l Bank*, 299 U.S. 109, 115-18 (1936); *Louisville & Nashville R.R. v. Mottley*, 211 U.S. 149, 152-54 (1908). As a consequence, federal jurisdiction over declaratory actions seeking to raise federal defenses cannot exist unless, at a minimum, there would be federal jurisdiction over the corresponding coercive action. *See Franchise Tax Bd.*, 463 U.S. at 16; *Public Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 248 (1952); *Skelly Oil*, 339 U.S. at 672.

The union and the government contend that this Court has jurisdiction over the union's request for declaratory relief because it would have had jurisdiction over a coercive suit petitioner might have brought "[h]ad the UAW in fact announced its intention to strike over the subcontracting dispute that is at the core of this lawsuit." Resp. Br. at 20; *see* Gov. Br. at 13-15. But just as the union cannot sue under Section 301(a) in the absence of an alleged violation, petitioner also could not have brought suit under Section 301(a) until there was an alleged breach. This Court has never suggested that jurisdiction over a declaratory judgment action can be based upon a lawsuit that cannot be filed. The most that it has said is that, where a request for declaratory relief "seeks in essence to assert a defense to an impending or threatened action, it is the character of the threatened action, and not of the defense, which will determine whether there is [federal] jurisdiction." *Wycoff Co.*, 344 U.S. at 248. Here, there is no federal jurisdiction over the supposedly threatened action because the essential element of a violation is lacking, and neither the union nor the government even begins to explain how the Declaratory Judgment Act could confer federal jurisdiction based upon an action that *might* become cognizable in federal court sometime in the future.

Moreover, even if there had been a violation and petitioner could have brought an enforcement action in federal court, there would still have been no jurisdiction over the union's suit. The rule that jurisdiction in a Declaratory Judgment Act case can be based upon the coercive action the declaratory defendant could have brought was formulated in cases invoking federal question jurisdiction. *See Wycoff*, 344 U.S. at 248; *Skelly Oil*, 339 U.S. at 671-74. Federal question jurisdiction is not, however, limited to coercive suits. It applies to "all civil actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. As a consequence, it makes no difference for purposes of federal question jurisdiction whether a coercive suit is filed: the only relevant factor is the applicable law. Section 301(a) does not, however, grant jurisdiction over all cases arising out of labor contracts; it restricts jurisdiction to suits "for violation of contract." 29 U.S.C. § 185(a). The Declaratory Judgment Act cannot be used to make an end run around this restriction upon the jurisdiction of the federal courts.

This principle was recognized by this Court in *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, a case upon which the opposing parties curiously rely. *See* Resp. Br. at 24; Gov. Br. at 12. In *Franchise Tax Board*, a state taxing agency sued in state court seeking, among other things, a declaration that the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, did not preclude the state agency from imposing a tax levy upon a taxpayer's benefits in an ERISA-covered welfare benefits plan. When the defendant tried to remove the case, the state agency objected that there was no federal jurisdiction, thereby raising the question whether the state agency could have sought declaratory relief in federal court. *See Franchise Tax Bd.*, 463 U.S. at 19 & n.18. Even though the defendant in *Franchise Tax Board* might have sought an injunction in federal court against the tax levy under ERISA, *see id.* at 19-20, this Court held that the state agency could not have sought declaratory relief in federal court based, in part, upon the specific restrictions in the jurisdictional statute in question in that case. *See id.* at 21-22.

Like Section 301(a), the statute at issue in *Franchise Tax Board* did not simply confer jurisdiction over all cases arising under a certain area

of the law. It provided that civil actions could be brought "by a participant, beneficiary or fiduciary" to enjoin violations of ERISA and to enforce the statute. 29 U.S.C. § 1132(a)(3). After noting that the state agency had other means of enforcing its laws, this Court observed that "[t]he express grant of federal jurisdiction in ERISA is limited to suits brought by certain parties . . . as to whom Congress presumably determined that a right to enter federal court was necessary to the statute's purpose." *Franchise Tax Bd.*, 463 U.S. at 21. In addition, this Court noted, Congress did not "go so far as to provide that any suit *against* such parties must also be brought in federal court." *Id.* This Court therefore concluded that the state agency's request for declaratory relief was "not within the original jurisdiction of the United States district courts." *Id.* at 22. So here, Section 301 grants jurisdiction only over suits for violation of labor contracts. This is not such a suit, and the Declaratory Judgment Act confers no right to bring a declaratory action.

In other contexts, this Court has similarly held that declaratory relief may not be used to circumvent restrictions upon federal jurisdiction. The application of the well-pleaded complaint rule to requests for declaratory relief reflects this principle. *See supra* p. 4. Similarly, this Court has held that requests for declaratory relief may not be used to evade restrictions imposed upon federal jurisdiction by the Eleventh Amendment (*see Green v. Mansour*, 474 U.S. 64, 73 (1985)) or by principles of federalism (*see Samuels v. Mackell*, 401 U.S. 66, 69-73 (1971)). There is similarly no reason to permit evasion of the restrictions imposed by Section 301(a) through the use of declaratory relief.

Both the union and the United States find support for their position in *Franchise Tax Board*'s brief mention of the Second Circuit's decision in *Black-Clawson Co. v. International Association of Machinists Lodge 335*, 313 F.2d 179 (2d Cir. 1962). *See* Resp. Br. at 24; Gov. Br. at 12. This Court merely observed in a footnote that *Black-Clawson* held that a "suit by [an] employer for declaratory judgment as to contract obligations arises under § 301." *Franchise Tax Bd.*, 463 U.S. at 25 n.28. There was no suggestion that a declaratory judgment can be sought *before* any alleged violation of contractual obligations or to invalidate a collective bargaining

agreement. Indeed, in *Black-Clawson* an employer sought a declaration concerning its refusal to arbitrate, which the union contended was a contract violation. *See* 313 F.2d at 180-81. Moreover, as noted earlier (*see supra* p. 3), immediately after describing *Black-Clawson*, this Court observed that "even under § 301 we have never intimated that any action merely relating to a contract within the coverage of § 301 arises exclusively under that section." *Franchise Tax Bd.*, 463 U.S. at 25 n.28.

3. The government asserts that suits seeking to invalidate collective bargaining agreements are "necessary to ensure consistent application of the federal substantive law of collective bargaining agreements." Gov. Br. at 17. The union also contends that federal jurisdiction over suits such as this one "ineluctably follows" from the "comprehensive federal common law of [labor] contracts" formulated under Section 301(a). Resp. Br. at 15. These arguments are without merit.

The absence of federal jurisdiction over suits to invalidate labor contracts does not pose any threat to the comprehensiveness of federal labor law. Where there is no federal court jurisdiction, parties are simply remitted to the National Labor Relations Board, the agency to which "Congress has entrusted administration of labor policy for the Nation." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959). Furthermore, far from promoting consistent application of the law, permitting suits in federal court to invalidate collective bargaining agreements would undermine that goal. As the union concedes, the federal common law of collective bargaining reflects the policies formulated and applied by the Board. *See* Resp. Br. at 27-28. Federal common law is "fashion[ed] from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456. Indeed, *Lincoln Mills* states that the "Labor-Management Relations Act, [29 U.S.C. § 141 *et seq.*,] expressly furnishes some substantive law." *Id.* at 457. Moreover, one of the Board's primary functions is "to oversee and referee the process of collective bargaining." *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 107-08 (1970). As the Board is the primary expositor of federal labor policy, where matters within the Board's jurisdiction such as conduct during the collective bargaining process are implicated, the federal common law of collective bargaining is controlled by the policies articulated by the Board. Accordingly, the

union acknowledges that "courts in exercising § 301 jurisdiction must take account of the NLRA rules governing the bargaining process" and "be guided by any NLRB decisions bearing on the conduct in issue." Resp. Br. at 27-28.

The federal policy developed by the Board will, however, be more uniformly applied if conduct during the collective bargaining process is considered by the Board rather than the courts. Indeed, as this Court recognized long ago, exclusive Board jurisdiction is generally "necessary to obtain uniform application of its substantive rules." *Garner v. Teamsters Local No. 776*, 346 U.S. 485, 490 (1953). Permitting courts to consider claims of fraud in the inducement and other misconduct during the collective bargaining process governed by Board policy would therefore tend not to promote, but to undermine consistent application of federal labor law.

The government recognizes the danger of conflict and inconsistency created by suits to invalidate collective bargaining agreements. It acknowledges that Section 301(a) should not be interpreted "to authorize a suit asserting a statutory claim that Congress has committed to the Board's primary jurisdiction, with contractual issues only tangentially involved." Gov. Br. at 26. The government does not, however, explain why this suit, which focuses upon a controversy within the Board's jurisdiction and in which the interpretation of a collective bargaining agreement is only tangentially involved, does not fall within the Board's purview. Nor, for that matter, does it offer any clue as to where to draw the line between disputes that are exclusively for the Board to decide and those that are not. *See id.* at 27 n.20.

4. The union and the government urge, however, that the union's fraud-in-the-inducement defense could be litigated in a suit by petitioner for breach of the agreement and that there is "no basis for precluding declaratory relief in a suit between the very same parties who would litigate an enforcement action." Resp. Br. at 24 (citation omitted). In fact, there is a compelling reason for doing so. As petitioner explained in its initial brief, *see* Pet. Br. at 26-31, when suits are brought to enforce collective bargaining agreements, contractual defenses such as fraud in the inducement must be considered out of necessity. If such defenses were ignored, the courts

would be placed in the untenable position of enforcing illegal, inequitable, and otherwise unenforceable agreements. *See, e.g., Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83-86 (1982). By contrast, where as here, a contractual defense is raised in a declaratory posture, there is no such necessity. Notably absent from the briefs of the union and the United States is any objection to this simple and persuasive explanation.

5. The union argues that suits seeking to invalidate collective bargaining agreements must be permitted in order to ensure a "neutral forum for the peaceful resolution of disputes" and to promote labor peace. Resp. Br. at 19 (quotation omitted); *see* Gov. Br. at 15-17. Otherwise, the argument goes, parties such as the union will be forced to strike or breach their agreements in order to resolve disputes over alleged misconduct in the collective bargaining process. *See* Resp. Br. at 7, 22; Gov. Br. at 16. This is plainly not true. As petitioner's initial brief demonstrated, the union could — and in fact did — present the dispute in this case to the Board. *See* Pet. Br. at 32-33; *see also Waymouth Farms, Inc.*, 324 N.L.R.B. No. 151, at 3 (1997) (noting the Board's power to invalidate collective bargaining agreements for fraud in the collective bargaining process).

There is also a more fundamental flaw in the union's logic. The union equates peace with the availability of a judicial forum to invalidate labor contracts. As this Court explained in the *Steelworkers Trilogy* and subsequent decisions, one of the most fundamental tenets of federal labor policy is that industrial peace is best achieved not through court supervision, but through the collective bargaining process. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 580 (1960).[3] Moreover, the most effective way to ensure peaceful, stable and lasting labor relations is by promoting a voluntary

---

[3] *See also AT&T Technologies v. Communications Workers*, 475 U.S. 643, 650-51 (1986); *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368, 378-79 (1974); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596-97 (1960); *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 567-68 (1960).

and self-sustaining process of cooperation, conciliation, and informal dispute resolution. *See id.*

Suits to invalidate collective bargaining agreements undermine this policy. They seek to upset the system of industrial self-government formed by collective bargaining agreements by invalidating those agreements. And, if successful, they return to the parties the economic weapons relinquished in those agreements. To be sure, a determination of the validity of a collective bargaining agreement may be desirable before there has been a violation of the agreement. But balancing the need for fairness in the collective bargaining process and the public's interest in avoiding industrial strife is a delicate and difficult policy determination — which the Board is far better suited to make than any federal court.

It makes no difference that parties who wish to avoid Board supervision and invalidate a collective bargaining agreement can attempt to force the issue into federal court by inciting an enforcement action. The stakes in an enforcement action are much higher than in a declaratory suit because in order to incite an enforcement action the collective bargaining agreement must be breached. As a consequence, in an enforcement action, if the party seeking to invalidate does not succeed, it not only loses the cost of the litigation, but is also subject to liability for breach. This makes seeking to invalidate a collective bargaining agreement through an enforcement action far less attractive than doing so through a declaratory suit and thereby deters parties from undermining collective bargaining agreements for purely strategic advantage. As a consequence, by prohibiting anticipatory suits to invalidate collective bargaining agreements in the labor context, Section 301(a) promotes rather than undermines industrial peace and overall labor policy.

6. Both the union and the government assert that the union's claim rests upon a "traditional . . . common law of contracts rule" and that the Board has no special expertise in applying that rule. Resp. Br. at 27 (emphasis omitted); *see* Gov. Br. at 27. This argument completely ignores the fact, conceded by the union (*see* Resp. Br. at 27-28), that Congress has given the Board primary jurisdiction over the collective bargaining process and that Board policy, not the "traditional common

law of contracts," dictates the obligations federal common law imposes in the context of collective bargaining.

7. The government points out that plaintiff's claim is "not coextensive" with the charges pending before the Board. Gov. Br. at 28. Proceedings before the Board are, however, never exactly the same as those that might otherwise be brought in court by a private plaintiff because the Board "acts in a public capacity to give effect to the declared public policy of the [National Labor Relations Act, 29 U.S.C. § 151 *et seq.*]," not to adjudicate private rights. *National Licorice Co. v. NLRB*, 309 U.S. 350, 362 (1940). As a consequence, the important question in determining the risk of conflict is not whether proceedings before a court are coextensive with those before the Board, but rather whether the controversy presented to the Board is the same as the one presented to the court. *See, e.g., Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of Carpenters*, 436 U.S. 180, 196-97 (1978). Here, neither the union nor the government disputes that "a claim of fraud based upon a[n] alleged failure to disclose information during the collective bargaining process is essentially indistinguishable from an unfair labor practice claim that could have been pursued before the NLRB." Pet. Br. at 33 (quotation omitted). Thus, the risk of conflict is clear.

8. The government asserts that there is no inconsistency between the declaratory relief sought by the union and the tentative settlement agreement between petitioner and the Board. *See* Gov. Br. at 29. The General Counsel of the Board declined, however, to seek the very remedy that the union requests in this proceeding. *See* Pet. Br. at 5-6, 33. Moreover, this Court has long recognized that "'conflict is imminent' whenever 'two separate remedies are brought to bear on the same activity.'" *Wisconsin Dep't of Indus. v. Gould*, 475 U.S. 282, 286 (1986) (quoting *Garner*, 346 U.S. at 498-99).

9. The union asserts that some agreements within Section 301 cannot be brought before the Board before a violation occurs and that petitioner's interpretation will leave parties without any declaratory remedy in some situations. *See* Resp. Br. at 25 n.13. The union does not, however, present any evidence that there are a significant number of these situations. Similarly, the government treats such cases as a

theoretical possibility, rather than a frequent occurrence. *See* Gov. Br. at 19-20, 25. As a consequence, there is no reason to think that the gap pointed out by the union poses any problem, yet alone a significant one. Moreover, even if it did, the problem would be for Congress to resolve. If Congress has left a gap in the jurisdiction of the federal courts, the responsibility for determining whether to fill that gap is Congress', not this Court's.

10. The union apparently misunderstands the significance of petitioner's alternative argument that the union's claim is for fraud. *See* Pet. Br. at 34-38. The union argues that the validity of the union's request for damages does not fall within the scope of the question presented. *See* Resp. Br. at 10-12 & n.4. Petitioner's point was, however, that the request for damages reveals the true nature of the union's claim. The complaint in this case contains only one count. J.A. 16-19. The relief sought by the union demonstrates that this count sounds in tort, not contract. Moreover, nothing in the union's brief suggests otherwise. To the contrary, it admits that its claim is at least in part a tort claim. *See* Resp. Br. at 10 n.4. Finally, the opposing parties neither contest that *Garmon* preemption applies to tort claims for fraud nor suggest that Section 301(a) protects such claims from preemption.

11. In any event, even if the union's claim were a contract claim, *Garmon* would still apply to this suit to invalidate a collective bargaining agreement. The union and the United States assert that, if the union's claim falls within Section 301(a), it is necessarily exempt from preemption under *Garmon*. *See* Resp. Br. at 25-27; Gov. Br. at 9. This Court has not, however, applied the *Smith v. Evening News* exception in the absence of an alleged contractual violation, and it has specifically reserved the question whether that exception covers all actions under Section 301(a). *See Smith v. Evening News*, 371 U.S. at 197-98. Moreover, neither the union nor the government has suggested any reason to extend the exception to cover this case.

There are, by contrast, powerful reasons why the *Smith v. Evening News* exception should not be extended to cover this case. Congress consciously chose not to permit the National Labor Relations Board to enforce collective bargaining agreements. Given the Board's broad

power over the collective bargaining process, Congress feared that conferring upon the Board "generalized power to determine the rights of parties under all collective bargaining agreements" would give it too much power and lead to "government regulation of the terms of those agreements." Pet. Br. at 17-18 (quotation omitted). Congress therefore left the enforcement of collective bargaining agreements to the "usual processes of the law." *Id.* at 17 (quotation omitted). By ensuring that enforcement actions can always be brought in federal court despite any overlap with Board jurisdiction, the *Smith v. Evening News* exception furthers this "strong policy favoring judicial enforcement of collective bargaining contracts." *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562 (1976). It also reflects the congressional determination that "courts are fully competent to resolve labor relations disputes through focusing on the terms of a collective bargaining agreement." *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300 (1971). However, where as here, the parties do not seek to enforce a collective bargaining agreement, and there is no question concerning the interpretation of an agreement, the policies underlying the *Smith v. Evening News* exception are inapplicable, and there is no reason to risk intrusion upon the Board's generally exclusive jurisdiction.

If the position of the opposing parties were adopted — and state and federal courts were permitted to adjudicate conduct that constitutes an unfair labor practice (*see supra* p. 11) — those courts would effectively be given jurisdiction to affirmatively enforce the National Labor Relations Act. Congress, however, committed that task exclusively to the National Labor Relations Board. As this Court has clearly stated, despite the authority of the courts to adjudicate defenses arising under federal labor law, "only the Board may provide affirmative remedies for unfair labor practices." *Kaiser Steel Corp.* 455 U.S. at 86. Moreover, in those limited circumstances where Congress has determined that courts should be permitted to remedy unfair labor practices, it has said so explicitly. *See* 29 U.S.C.

§§ 164(c)(2), 187.[4] There is not, and cannot be, any claim that Congress has explicitly conferred such affirmative jurisdiction on the courts in cases such as this one involving misconduct during the collective bargaining process, and it should not be implied. Rather, the *Garmon* doctrine requires that the Board be given exclusive jurisdiction to grant such affirmative relief.

In sum, both the plain language of Section 301(a) and the federal labor policies underlying in the *Garmon* preemption doctrine lead to the same conclusion: suits such as the union's seeking to invalidate collective bargaining agreements cannot be brought in federal court.[5]

---

[4] In Section 303 of the LMRA, Congress authorized individuals "injured in [their] business or property" by reason of certain unfair labor practices to sue in federal court for "damages by [them] sustained and the costs of the suit." 29 U.S.C. § 187. Congress also provided that, where the Board has declined to exercise jurisdiction over a class of labor disputes, state courts and administrative agencies are free to exercise jurisdiction over those disputes. *See id.* § 164(c).

[5] Petitioner agrees that the expiration of the 1994 collective bargaining agreement between the parties does not moot the question presented. Should the union prevail on appeal, the lower courts would be forced to address the union's claim for damages. In addition, declaring the agreement void would raise questions concerning rights that may have vested under the agreement. *See, e.g., Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 209-10 (1991) (discussing vesting).

CONCLUSION

For the foregoing reasons, and those stated in petitioner's initial brief, the judgment of the United States Court of Appeals for the Third Circuit should be reversed.

Respectfully submitted,

TIMOTHY B. DYK
(Counsel of Record)
ANDREW M. KRAMER
DANIEL H. BROMBERG
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939

Counsel for Petitioner
Textron Lycoming Reciprocating
Engine Division, AVCO Corp.

February 13, 1998

(6)

Supreme Court, U.S.
FILED
JAN 28 1998
CLERK

No. 97-463

In the Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIV., AVCO CORP., PETITIONER

v.

UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA INTERNATIONAL UNION AND ITS LOCAL 787

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

SETH P. WAXMAN
Solicitor General

LAWRENCE G. WALLACE
Deputy Solicitor General

LISA SCHIAVO BLATT
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

FREDERICK L. FEINSTEIN
General Counsel

LINDA SHER
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

JOHN H. FERGUSON
Assistant General Counsel
National Labor Relations Board
Washington, D.C. 20570

38 pp

QUESTION PRESENTED

Whether Section 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185(a), which confers federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization," authorizes a suit in federal court to declare a collective bargaining agreement voidable because of fraud in the inducement.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	
Summary of argument	2
Argument	6
Section 301(a) authorizes a court to declare a collective bargaining agreement voidable for fraud in the inducement	8
A. A court has authority under Section 301(a) to render a declaratory judgment	10
B. Respondents' suit for declaratory relief under Section 301(a) furthers the statute's goals of uniformity and comprehensiveness in the federal substantive law governing labor agreements	17
C. Respondents' suit under Section 301(a) does not unduly conflict with the Board's jurisdiction	25
Conclusion	30

TABLE OF AUTHORITIES

Cases:

Aetna Life Ins. Co. v. *Howarth*, 300 U.S. 227 (1937)	15
Allied Chem. & Alkali Workers, Local Union No. 1 v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971)	20
Allis-Chalmers Corp. v. *Lueck*, 471 U.S. 202 (1985)	18, 20, 22, 23, 28
Amalgamated Ass'n of St. Employees v. *Lockridge*, 403 U.S. 274 (1971)	2, 23

Cases—Continued: Page

AMCAR Div., ACF Indus., Inc. v. *NLRB*, 592 F.2d 422 (8th Cir. 1979) 8
AT & T Technologies, Inc. v. *Communications Workers*, 475 U.S. 643 (1986) 24
Atkinson v. *Sinclair Refining Co.*, 370 U.S. 238 (1962) 16
Beverly Enterprises-Pennsylvania, Inc. v. *District 1199C, Nat'l Union of Hosp. Employees*, 90 F.3d 93 (3d Cir. 1996) 5-6
Black-Clawson Co. v. *International Ass'n of Machinists Lodge 355*, 313 F.2d 179 (2d Cir. (1962) 12, 15, 17
Breininger v. *Sheet Metal Workers Local No. 6*, 493 U.S. 67 (1989) 9
Carey v. *Westinghouse Elec. Corp.*, 375 U.S. 261 (1964) 28
Caterpillar, Inc. v. *Williams*, 482 U.S. 386 (1987) . 18, 19
Charles Dowd Box Co. v. *Courtney*, 368 U.S. 502 (1962) 11, 15, 18, 23, 25
Communications Workers v. *Beck*, 487 U.S. 735 (1988) 27
Franchise Tax Bd. v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983) 10, 12, 13, 15, 18
Groves v. *Ring Screw Works, Ferndale Fastener Div.*, 498 U.S. 168 (1990) 15
Hernandez v. *National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972) 27
Hines v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976) 28
ILGWU v. *NLRB*, 463 F.2d 907 (D.C. Cir. 1972) 8
International Bhd. of Elec. Workers v. *Hechler*, 481 U.S. 851 (1987) 19

Cases—Continued: Page

International Bhd. of Teamsters, Local 952 v. *American Delivery Serv. Co.*, 50 F.3d 770 (9th Cir. 1995) 13-14
International Longshoremens Ass'n v. *Davis*, 476 U.S. 380 (1986) 20
International Union of Operating Engineers Local No. 12 v. *Wilson*, cert. denied, 505 U.S. 1212 (1992) 1
Keener Oil & Gas Co. v. *Consolidated Gas Utils. Corp.*, 190 F.2d 985 (10th Cir. 1951) 16
Kolentus v. *Avco Corp.*, 798 F.2d 949 (7th Cir. 1986), cert. denied, 479 U.S. 1032 (1987) 9
Kozera v. *Westchester-Fairfield Chapter of Nat'l Elec. Contractors Ass'n*, 909 F.2d 48 (2d Cir. 1990), cert. denied, 498 U.S. 1084 (1991) 21
Lingle v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988) 22
Litton Fin. Printing Div. v. *NLRB*, 501 U.S. 190 (1991) 25, 29
Livadas v. *Bradshaw*, 512 U.S. 107 (1994) 22
Local 174, Teamsters v. *Lucas Flour Co.*, 369 U.S. 95 (1962) 9, 17, 20
Local Freight Drivers, Local 208 v. *Rozay's Transfer*, 850 F.2d 1321 (9th Cir. 1988), cert. denied, 490 U.S. 1030 (1989) 2, 29
Mack Trucks, Inc. v. *International Union, UAW*, 856 F.2d 579 (3d Cir. 1988), cert. denied, 489 U.S. 1054 (1989) 4, 10
Martin v. *Garman Constr. Co.*, 945 F.2d 1000 (7th Cir. 1991), cert. denied, 502 U.S. 1122 (1992) 26
Maryland Casualty Co. v. *Pacific Coal & Oil Co.*, 312 U.S. 270 (1941) 15
Nash v. *Trustees of Boston Univ.*, 946 F.2d 960 (1st Cir. 1991) 19, 22

Cases—Continued: Page

Nielsen v. *International Ass'n of Machinists & Aerospace Workers, Local Lodge 2569*, 94 F.3d 1107 (7th Cir. 1996), cert. denied, 117 S. Ct. 1426 (1997) 26
O'Neill, Ltd., 288 N.L.R.B. 1354 (1988), enforced, 965 F.2d 1522 (9th Cir. 1992), cert. denied, 509 U.S. 904 (1993) 8
Operating Engineers Pension Trust v. *Wilson*, 915 F.2d 535 (9th Cir. 1990), cert. denied, 505 U.S. 1212 (1992) 9, 22
Parker v. *Connors Steel Co.*, 855 F.2d 1510 (11th Cir. 1988), cert. denied, 490 U.S. 1066 (1989) 9
Penntech Papers, Inc. v. *NLRB*, 263 N.L.R.B. 264 (1982), enforced, 706 F.2d 18 (1st Cir.), cert. denied, 464 U.S. 892 (1983) 8
Phelan v. *Local 305, United Ass'n of Journeymen*, 973 F.2d 1050 (2d Cir. 1992) 26
Public Serv. Comm'n v. *Wycoff Co.*, 344 U.S. 237 (1952) 13
Retail Clerks Int'l Ass'n v. *Lion Dry Goods, Inc.*, 369 U.S. 17 (1962) 20
San Diego Bldg. Trades Council v. *Garmon*, 359 U.S. 236 (1959) 8, 9, 10, 20, 23
Serrano v. *Jones & Laughlin Steel Co.*, 790 F.2d 1279 (6th Cir. 1986) 9
Smith v. *Evening News Ass'n*, 371 U.S. 195 (1962) 2, 9, 10, 26
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 (1957) 11, 12, 17, 18, 23, 25
Vaca v. *Sipes*, 386 U.S. 171 (1967) 9
Walker Process Equip., Inc. v. *Food Mach. & Chem. Corp.*, 382 U.S. 172 (1965) 13
Waymouth Farms, 324 N.L.R.B. No. 151 (Oct. 31, 1997) 8

Cases—Continued: Page

William E. Arnold Co. v. *Carpenters Dist. Council*, 417 U.S. 12 (1974) 9
Wilton v. *Seven Falls Co.*, 515 U.S. 277 (1995) 26

Statutes:

Declaratory Judgment Act, 28 U.S.C. 2201(a) 6, 10, 12, 13, 14, 16
Labor Management Relations Act, 29 U.S.C. 141 *et seq.*:
§ 301, 29 U.S.C. 185 ..... 1, 5
§ 301(a), 29 U.S.C. 185(a) ..... *passim*
§ 303, 29 U.S.C. 187 9
National Labor Relations Act, ch. 372, § 10(a), 49 Stat. 453 28
National Labor Relations Act, ch. 120, § 10(a), 61 Stat. 146 28
National Labor Relations Act, 29 U.S.C. 151 *et seq.*:
§ 8(a)(1), 29 U.S.C. 158(a)(1) 3, 8
§ 8(a)(5) 29 U.S.C. 158(a)(5) 3, 8
§ 8(b)(4), 29 U.S.C. 158(b)(4) 9
§ 10(a), 29 U.S.C. 160(a) 28
28 U.S.C. 1337 9
28 U.S.C. 1441(b) 18

Miscellaneous:

93 Cong. Rec. 3656 (1947) 12
Edwin Borchard, *Declaratory Judgments* (2d ed. 1941) 14, 16, 26
Robert A. Gorman, *Basic Text on Labor Law* (1976) 10
H.R. 4908, 79th Cong., 2d Sess. (1946) 11
H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947) 28
The Oxford English Dictionary (2d ed. 1989) 11
The Random House Dictionary of the English Language (2d ed. unabridged 1987) 11

Miscellaneous—Continued: Page

Restatement of Contracts (1932) 27
Restatement (Second) of Contracts (1981) 14
Webster's New International Dictionary of the English Language (2d ed. unabridged 1958) 11
Samuel Williston, *A Treatise on the Law of Contracts* (Walter H.E. Jaeger ed. 1970) 14
10A Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* (2d ed. 1983) 12-13, 16

In the Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-463

TEXTRON LYCOMING RECIPROCATING ENGINE DIV., AVCO CORP., PETITIONER

v.

UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA INTERNATIONAL UNION AND ITS LOCAL 787

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE UNITED STATES

As the agency responsible for administering and enforcing national labor policy, the National Labor Relations Board (NLRB) has a significant interest in the respective authority of the Board and the courts to decide issues relating to the enforceability of labor contracts.[1] This Court has specifically considered

[1] In response to the Court's invitations, the United States twice has filed briefs as amicus curiae at the petition stage, arguing that an employer's suit seeking declaratory relief based on a union's fraud in the inducement of a collective bargaining agreement is not within the NLRB's exclusive jurisdiction and may be brought under Section 301. *International Union of Operating Engineers Local No. 12* v. *Wilson*, No. 91-4 (U.S. Br. at 8-9), cert. denied, 505 U.S. 1212 (1992);

the NLRB's views in determining whether matters relating to collective bargaining agreements are within the Board's exclusive jurisdiction. See *Amalgamated Ass'n of St. Employees* v. *Lockridge*, 403 U.S. 274, 298 n.8 (1971); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 198 (1962).

STATEMENT

1. The complaint in this case alleges the following facts. Respondents (UAW or the union) represent approximately 500 employees of petitioner (Textron) at Textron's plant in Williamsport, Pennsylvania. The UAW and Textron were parties to a collective bargaining agreement in effect from April 1, 1994, to April 1, 1997. Before negotiations for that contract commenced, the union asked Textron whether it planned to subcontract work that would otherwise be performed by members of the bargaining unit at the plant. The union also requested any written documents that Textron had prepared on the subject of subcontracting. The union twice repeated its request for information relating to subcontracting. During that time period, Textron did not disclose any information about plans to subcontract bargaining unit work. Pet. App. 2a-3a; J.A. 16-17.

During contract negotiations, the UAW renewed its request for any subcontracting plans. Textron's vice president for human resources, Frank Ratchford, stated to union negotiators that he knew of no such plans, and he promised to make sure that his knowledge was complete. Neither Ratchford nor any other Textron official raised the issue of subcontracting again during the negotiations. The parties then entered into the aforesaid collective

---

Local Freight Drivers, Local 208 v. *Rozay's Transfer*, No. 88-535 (U.S. Br. at 6-14), cert. denied, 490 U.S. 1030 (1989).

bargaining agreement. Pet. App. 3a; J.A. 17-18. The agreement provides for arbitration of any unsettled grievances (J.A. 8-9) and prohibits the union from engaging in any "strikes * * * or other similar interruptions of, or interferences with, work * * * for any reason" (J.A. 12).

During the negotiations leading up to the agreement, Textron secretly developed a plan to subcontract some of the bargaining unit work. After the UAW membership ratified the collective bargaining agreement, Textron's subcontracting plan was presented to and approved by Textron's Board of Directors. The UAW at that time first learned of the existence of the subcontracting plan and that the plan would result in loss of the jobs of approximately half of the bargaining unit employees. Pet. App. 3a; J.A. 18.

2. In November 1994, the union filed an unfair labor practice charge with the National Labor Relations Board (NLRB). J.A. 23. In April 1996, the NLRB's Regional Director issued a complaint alleging that Textron had failed to apprise the UAW during contract negotiations of its plans to subcontract bargaining unit work and failed to bargain in good faith about that subject, in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. 158(a)(1) and (5) (NLRA). J.A. 23-27. The Regional Director's complaint is the subject of a tentative prehearing unilateral settlement between the Regional Director and Textron, to which the UAW has filed objections. Pet. 5; Resp. Br. in Opp. 4 n.3.

3. In November 1995, the UAW filed a complaint in federal district court, alleging that Textron fraudulently induced the UAW to enter into the collective bargaining agreement. The union asserts that, had it known of Textron's subcontracting plan

when the union was still free to strike, the union would not have entered into the agreement or would have employed a different bargaining strategy. Pet. App. 3a; J.A. 18-19. The union requests "a declaratory judgment that the existing collective bargaining agreement between the parties is voidable at [the union's] option," as well as compensatory and punitive damages. J.A. 19. The complaint invokes (J.A. 16) the court's jurisdiction under Section 301(a) of the LMRA, which permits "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. 185(a).[2]

Textron moved to dismiss the complaint on the grounds that the court lacks jurisdiction under Section 301(a) and that the union failed to submit its claims to arbitration as required by the contract. The district court dismissed the complaint for lack of jurisdiction. Pet. App. 14a-18a. It reasoned that because the union's suit "turns solely on an alleged violation of good faith bargaining" and is "independent of the terms of the contract," the union's claims are within the exclusive jurisdiction of the NLRB. *Id.* at 17a, 18a.

4. The court of appeals reversed. Pet. App. 1a-13a. The court observed (*id.* at 6a-8a) that it had previously held in *Mack Trucks, Inc.* v. *International Union, UAW*, 856 F.2d 579, 586-588 (1988), cert. denied, 489 U.S. 1054 (1989), that an employer may

[2] Section 301(a) provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. 185(a).

bring suit under Section 301(a) for a declaratory judgment upholding the validity of a collective bargaining agreement. The court explained that the purpose of Section 301(a)—that "courts resolve disputes of a contractual nature, including disputes over the agreement's very existence"—equally applies "when the party who files suit seeks a declaration that the agreement is not enforceable." Pet. App. 10a. The court also observed that Section 301(a) clearly would allow a court to decide the union's allegation of fraudulent inducement if it had been raised as an affirmative defense in an action brought by Textron to enforce the agreement. Hence, the court reasoned that "the development of a consistent body of law in this area depends, in part, on federal court jurisdiction over all claims of a contractual nature, no matter who first resorts to court." *Ibid.*

The court of appeals also rejected Textron's argument that the suit was beyond the scope of Section 301(a) because "the UAW's claims stem from the *negotiation* of the agreement, [and] not from an alleged violation of the terms of the agreement itself." Pet. App. 11a. The court recognized that "federal courts lack Section 301 jurisdiction over challenges to contracts on the basis that they conflicted with the NLRA or some other external agreement." *Id.* at 12a (quoting *Beverly Enterprises-Pennsylvania, Inc.* v. *District 1199C, Nat'l Union of Hosp. Employees*, 90 F.3d 93, 95 (3d Cir. 1996)). The court explained that the union's suit for fraud in the inducement, however, "arises not out of the NLRA or another contract, but out of the collective bargaining agreement itself." *Ibid.* The court further reasoned that

> [t]he claim alleges flaws in the basic formation of the collective bargaining agreement, and its resolution is integral to the question whether

> the agreement is enforceable. In other words, Textron's allegedly fraudulent conduct goes to the heart of the enforceability of the collective bargaining agreement between the parties.

Ibid. Accordingly, the court concluded that "even if the UAW's claim could arguably constitute an unfair labor practice under * * * the NLRA, the UAW's claim is not solely a claim under the NLRA, and is subject to the concurrent jurisdiction of both the federal district courts and the NLRB." *Id.* at 13a.[3]

SUMMARY OF ARGUMENT

A. Section 301(a), which authorizes "[s]uits for violation of contracts," is properly interpreted to encompass suits for a declaratory judgment that a labor contract is voidable based on fraud in the inducement. A controversy over whether a contract has been or would be violated necessarily implicates the question of the enforceability *vel non* of a contract (unless enforceability is uncontested). Moreover, nothing in the statutory text or history of Section 301(a) precludes a court from exercising its authority under the Declaratory Judgment Act, 28 U.S.C. 2201(a). That Act permits a court to award declaratory relief in a case of "actual controversy" within its jurisdiction. Hence, because a court would have jurisdiction under Section 301(a) over an enforcement action alleging violation of a labor contract, a court may issue a declaratory judgment that the contract is unenforceable under Section 301(a). That conclusion properly effectuates the

[3] The court of appeals remanded the case to the district court with instructions to consider Textron's alternative contention that the complaint should be dismissed because the union failed to exhaust the contractual grievance procedures before filing suit. Pet. App. 13a n.4.

object of declaratory relief to ascertain a party's rights in advance of a violation of law, as well as the purpose of Section 301(a) to provide a judicial forum for the peaceful resolution of contract disputes.

B. The availability of declaratory relief under Section 301(a) is necessary to assure the development of uniform and comprehensive federal standards for the formation, application, and enforcement of labor contracts. Fraud in the inducement is a traditional contract defense that may be raised in a breach-of-contract action brought under Section 301(a). Federal law should govern the validity of that defense, regardless of whether the party asserting it is a defendant or a plaintiff. A contrary result would mean that the forum for a dispute, and possibly the applicable law, would depend on which party files suit.

Contrary to petitioner's contentions, Section 301(a) permits a court to determine the enforceability of collective bargaining agreements, and under basic contract principles the question whether an agreement is validly formed is central to the issue of the agreement's enforceability. Moreover, the need for a uniform and inclusive body of federal law under Section 301(a) applies as much to the resolution of a claim of fraud in the inducement as to the interpretation of a particular term of a collective bargaining agreement.

C. Respondents' suit would not unduly conflict with the Board's authority to resolve unfair labor practice disputes. The suit does not assert a statutory violation of the NLRA; rather, it raises a traditional contract defense that should be entertained by a court as well as by the Board. Finally, there is no unwarranted conflict between respondents' suit under Section 301(a) and the pending administrative proceeding before the Board.

ARGUMENT

SECTION 301(a) AUTHORIZES A COURT TO DECLARE A COLLECTIVE BARGAINING AGREEMENT VOIDABLE FOR FRAUD IN THE INDUCEMENT

In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959), this Court articulated the general rule that "[w]hen an activity is arguably subject to [Section] 7 or [Section] 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the *exclusive* competence of the National Labor Relations Board." The court of appeals and the parties all acknowledge that fraudulently inducing an employer or a union to enter into a collective bargaining agreement is arguably an unfair labor practice subject to the NLRA. That assumption is well founded. The Board has determined that fraudulent concealment in bargaining over plant relocations, subcontracting, and comparable matters is an unfair labor practice under Sections 8(a)(1) and (5) of the NLRA.[4] Thus, a claim of fraud in the inducement of a collective bargaining agreement is within the scope of *Garmon*'s general rule.[5]

---

[4] See, *e.g.*, *ILGWU* v. *NLRB*, 463 F.2d 907, 917, 921-923 (D.C. Cir. 1972); *AMCAR Div., ACF Indus., Inc.* v. *NLRB*, 592 F.2d 422, 425-426, 429-431 (8th Cir. 1979); *Penntech Papers, Inc.* v. *NLRB*, 263 N.L.R.B. 264, 265, 276-277 (1982), enforced, 706 F.2d 18, 27 (1st Cir.), cert. denied 464 U.S. 892 (1983). The remedies that the Board has ordered include rescission of the fraudulently induced contract (*Waymouth Farms*, 324 N.L.R.B. No. 151 at 3 (Oct. 31, 1997)) and monetary relief to the wronged party for the costs of negotiating on a false basis (*O'Neill, Ltd.*, 288 N.L.R.B. 1354, 1356-1357 (1988), enforced, 965 F.2d 1522 (9th Cir. 1992), cert. denied, 509 U.S. 904 (1993)).

[5] Most federal courts, applying *Garmon*, have concluded that state law fraud claims are preempted by the NLRA because fraud in the inducement is arguably an unfair labor practice. See, *e.g.*, *Parker* v. *Connors Steel Co.*, 855 F.2d 1510, 1515-1518 (11th Cir. 1988), cert. denied, 490 U.S. 1066 (1989); *Serrano* v. *Jones & Laughlin Steel Co.*, 790 F.2d 1279, 1286-1288 (6th Cir. 1986); *Kolentus* v. *Avco Corp.*, 798 F.2d 949, 960-962 (7th Cir. 1986), cert. denied, 479 U.S. 1032 (1987); but cf. *Operating Engineers Pension Trust* v. *Wilson*, 915 F.2d, 535, 538-540 (9th Cir. 1990) (no preemption when contract not enforceable by Board), cert. denied, 505 U.S. 1212 (1992) (discussed note 16, *infra*).

This Court has explained, however, that *Garmon*'s "pre-emption doctrine * * * has never been rigidly applied to cases where it could not fairly be inferred that Congress intended exclusive jurisdiction to lie with the NLRB." *Vaca* v. *Sipes*, 386 U.S. 171, 179 (1967). Indeed, in conferring court jurisdiction over suits encompassed within Section 301(a) of the LMRA, "Congress itself * * * carved out [an] exception[] to the Board's exclusive jurisdiction." *Ibid.*[6] A court therefore may adjudicate a contract suit properly brought under Section 301(a) even though the conduct at issue also may constitute an unfair labor practice prohibited by the NLRA. *Id.* at 179-180; accord *William E. Arnold Co.* v. *Carpenters Dist. Council*, 417 U.S. 12, 15-18 (1974); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 197 (1962); *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 101 n.9 (1962).

---

[6] Congress elsewhere has authorized suits involving activity otherwise remediable by the NLRB. See 29 U.S.C. 187 (suits for injury to business or property by activity violating Section 8(b)(4) of the NLRA, 29 U.S.C. 158(b)(4)). Additionally, this Court has recognized exceptions to the Board's exclusive jurisdiction over labor disputes. See *Garmon*, 359 U.S. at 243-244; *Breininger* v. *Sheet Metal Workers Local No. 6*, 493 U.S. 67, 83-84 (1989) (federal courts have jurisdiction under 28 U.S.C. 1337 over duty of fair representation cases).

These background principles are entirely consistent with our contention that Section 301(a), when read in conjunction with a court's authority under the Declaratory Judgment Act, 28 U.S.C. 2201(a), encompasses a suit to declare a collective bargaining agreement voidable based on fraud in the inducement. Accordingly, the district court had jurisdiction over respondents' suit, regardless of whether the allegedly fraudulent conduct constitutes an unfair labor practice remediable by the Board.

A. A Court Has Authority Under Section 301(a) To Render a Declaratory Judgment

1. Section 301(a) confers jurisdiction on federal courts to hear "[s]uits for violation of contracts" between employers and unions. That language does not compel the restrictive interpretation urged by petitioner (Pet. Br. 20-23, 31-34). As the Third Circuit has explained: "The precise meaning of 'suits for violation of contracts' in [Section] 301(a) is unclear, and Congress did not define it in the LMRA." *Mack Trucks, Inc.*, 856 F.2d at 586.

This Court has indicated that "[Section] 301 is not to be given a narrow reading." *Evening News Ass'n*, 371 U.S. at 199; *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1983) ("We have not taken a restrictive view of who may sue under [Section] 301 * * * or of what contracts are covered by [Section] 301.") (citations omitted); see also Robert A. Gorman, *Basic Text on Labor Law* 546 (1976) ("[t]he Court has * * * given a broad and hospitable interpretation to the terms of section 301 itself").

Consistent with that principle, Section 301(a)'s grant of jurisdiction over "[s]uits for violation of contracts" may properly be interpreted to authorize

not only suits alleging a past violation of contract, but also suits seeking a declaratory judgment that a party would not be liable for a violation of contract under Section 301(a) because that contract is unenforceable. The ordinary understanding of the word "for," as used in the statutory phrase, is broad enough to encompass not only a suit that "alleges" a violation of contract,[7] but also one that concerns a violation of contract, or is intended to establish a legal right to engage in what otherwise would be a contract violation.[8] Accordingly, "[s]uits for violation" of contracts under Section 301(a) is textually broad enough to include suits by parties, such as respondents, for declaratory relief that their obligations under a labor agreement are voidable because of fraud in the inducement.

In any event, nothing in the plain language of Section 301(a) prohibits a court from exercising its

---

[7] Such a suit is clearly authorized by Section 301(a), as was made even more evident by the language of a predecessor bill, Section 10 of the Case bill, which authorized "a suit for damages for [a] breach" of a labor contract. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 487 (1957) (Frankfurter, J., dissenting) (citing H.R. 4908, 79th Cong., 2d Sess. (1946)). That language was "slightly recast" when Congress enacted Section 301(a). *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 511 (1962).

[8] *Webster's New International Dictionary of the English Language* 984 (2d ed. unabridged 1958) (defining "for" as "[a]s a preparation towards * * * in view of; having as goal or object; * * * in order to effect"; "[a]s regards; concerning; * * * in respect to"); accord *The Random House Dictionary of the English Language* 747 (2d ed. unabridged 1987) (defining "for" as "with the object or purpose of"; "in order to obtain, gain, or acquire: *a suit for alimony*"); 6 *The Oxford English Dictionary* 23, 26 (2d ed. 1989) (defining "for" as "[w]ith a view to; with the object or purpose of: as preparatory to"; "[a]s regards, with regard or respect to, concerning").

authority under the Declaratory Judgment Act, which authorizes federal courts "[i]n a case of actual controversy within its jurisdiction * * * [to] declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. 2201(a). Indeed, in enacting Section 301(a), Congress specifically contemplated that suits would be brought "under the Declaratory Judgments Act in order to secure declarations from the [c]ourt of legal rights under the contract." *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957) (quoting 93 Cong. Rec. 3656 (1947) (remarks of Rep. Barden)). Moreover, in *Franchise Tax Board*, 463 U.S. at 25 n.28, this Court noted with approval the Second Circuit's decision in *Black-Clawson Co.* v. *International Ass'n of Machinists Lodge 355*, 313 F.2d 179, 181-182 (2d Cir. 1962), in which the court of appeals held that a suit for declaratory judgment concerning a party's obligations under a labor contract may be brought under Section 301(a).[9] Accordingly, the text and history of Section 301(a) permit a court to award declaratory relief.

2. Respondents' suit seeking a declaration that a collective bargaining agreement is unenforceable under Section 301(a) is a paradigmatic application of the Declaratory Judgment Act. That Act permits a federal court to grant declaratory relief "whenever a declaration is sought that the defendant does not have a federal right." 10A Charles A. Wright, Arthur

[9] In *Black-Clawson Co.*, the Second Circuit held that an employer could bring a Section 301(a) suit for a declaratory judgment that would determine the employer's obligations to arbitrate under a collective bargaining agreement. In so holding, the court of appeals rejected the decisions of other courts that had construed Section 301(a) to authorize only suits alleging a violation of a contract. 313 F.2d at 181.

R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2767, at 740 (2d ed. 1983); see also *id.* at 745 ("if the federal issue would inhere in the claim on the face of the complaint that would have been presented in a traditional damage or coercive action, then federal jurisdiction exists over the declaratory judgment action"); *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 248 (1952) (noting in dictum that "the character of the threatened action * * * determine[s] whether there is federal-question jurisdiction in the District Court"). Thus, "[f]ederal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question." *Franchise Tax Bd.*, 463 U.S. at 19.[10]

So here, as petitioner recognizes (Pet. Br. 7), respondents filed the instant suit "in order to credibly threaten to strike" (Pet. Br. 7), *i.e.*, engage in conduct that otherwise would violate the contract's no-strike clause. J.A. 12. If, instead of filing suit, respondents had struck once petitioner's subcontracting plans were revealed, and had *petitioner* then filed suit under Section 301(a) against respondents for violating the contract, respondents could have asserted fraud in the inducement as a defense to the suit. *Inter-*

[10] "For instance, federal courts have consistently adjudicated suits by alleged patent infringers to declare a patent invalid, on the theory that an infringement suit by the declaratory judgment defendant would raise a federal question." *Franchise Tax Bd.*, 463 U.S. at 19 n.19; see also *Walker Process Equip., Inc.* v. *Food Mach. & Chemical Corp.*, 382 U.S. 172, 176 (1965) (a patent's validity may be challenged "on various grounds, including fraudulent procurement," and "the validity of the patent may be tested under the Declaratory Judgment Act, 28 U.S.C. 2201").

national Bhd. of Teamsters, Local 952 v. *American Delivery Serv. Co.*, 50 F.3d 770, 774 (9th Cir. 1995) ("Fraud in the inducement is an issue that may be interposed as a traditional contract defense in an action for breach of a CBA."); Pet. Br. 29 ("before enforcing an agreement, courts must adjudicate affirmative defenses such as fraud based upon conduct occurring in the collective bargaining process"); see generally *Restatement (Second) of Contracts* §§ 159-164 (1981); 12 Samuel Williston, *A Treatise of the Law of Contracts* §§ 1486-1488 (Walter H.E. Jaeger ed. 1970).

Respondents' suit for declaratory relief presents exactly the same legal question as would a coercive enforcement suit brought under Section 301(a), *i.e.*, whether the parties' collective bargaining agreement, including its no-strike clause, is valid and enforceable. The only difference is that the procedural posture of the parties is reversed.[11] Thus, because the district court would have jurisdiction under Section 301(a) over precisely the same question if petitioner had filed suit to enforce the collective bargaining agreement upon a breach by respondents, the court has jurisdiction over respondents' suit seeking a declaratory judgment that petitioner's rights under the agreement do not exist.

---

[11] As explained by Professor Borchard, a proponent and author of the Declaratory Judgment Act, "[t]he authorization to, or exercise by, the courts of the privilege of determining the legal rights of the parties, without a supplemental coercive decree, would, while enabling them to afford relief upon some operative facts and interests not now capable of legal protection, nevertheless constitute changes in procedure only." Edwin Borchard, *Declaratory Judgments* 21 (2d ed. 1941).

Petitioner suggests (Pet. Br. 31, 32 n.21) that although declaratory relief may be appropriate if a party brings a suit to declare an agreement *enforceable* in response to an anticipatory repudiation (see, *e.g.*, *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 503-504 (1962)), it is not available if a party files suit to declare the agreement *unenforceable*. This Court has stated, however, that "[i]t is the nature of the controversy, not the methods of its presentation or the particular party who presents it, that is determinative." *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 244 (1937). Thus, when the legal question at issue is the enforceability *vel non* of a collective bargaining agreement, the availability of declaratory relief under Section 301(a) does not turn on whether the party asserting that the contract is enforceable is the plaintiff or the defendant. See *Franchise Tax Bd.*, 463 U.S. at 19 n.19 ("the nature of the declaratory remedy * * * was designed to permit adjudication of either party's claims of right"); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941) ("It is immaterial that * * *, in the declaratory judgment suit, the positions of the parties in the conventional suit are reversed; the inquiry is the same in either case."); see also *Black-Clawson Co.*, 313 F.2d at 182 ("The issues of fact and of law to be determined by the court are the same, whether the complaint alleges a violation of the contract * * * or whether it alleges compliance with the contract and requests protection by declaratory judgment.").

3. The availability of declaratory relief in this case under Section 301(a) is supported by the "strong presumption that favors access to a neutral forum for the peaceful resolution of disputes," *Groves* v. *Ring Screw Works, Ferndale Fastener Div.*, 498 U.S. 168, 173 (1990), and by the central purpose of

the Declaratory Judgment Act to "permit[] actual controversies to be settled before they ripen into violations of law or a breach of contractual duty." Wright, Miller & Kane, *supra*, § 2751, at 570; see also Borchard, *supra*, at 943-944 ("a plaintiff often claims release from a contract by way of anticipatory defense on the ground that the contract was obtained from him by fraud or misrepresentation," because of "[t]he risk of acting upon his own belief that he is discharged from further performance"). It is axiomatic that under modern practice, with the availability of declaratory relief, "a party to a contract is not compelled to wait until he has committed an act which the other party asserts will constitute a breach, but may seek relief by declaratory judgment and have the controversy adjudicated in order that he may avoid the risk of damages or other untoward consequence." *Keener Oil & Gas Co.* v. *Consolidated Gas Utils. Corp.*, 190 F.2d 985, 989 (10th Cir. 1951).

This case well illustrates the reasons why parties have been enabled to ascertain their legal rights under a contract without first having to breach it. Under petitioner's restrictive view, respondents could not invoke a court's authority under Section 301(a) to adjudicate their claim for fraud in the inducement unless respondents first initiated a strike (or engaged in other conduct that violates the agreement) and then petitioner brought a coercive enforcement action for damages.[12] That result "comport[s] neither with the streamlined procedural policy embodied in the declaratory judgment proceeding nor with the strong concern embodied in sec-

[12] In addition to obtaining damages for an illegal strike, an employer may discharge employees engaging in the strike. *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 246 (1962).

tion 301 for the enforcement of collective bargaining agreements and the peaceful resolution of contract disputes between labor and management." *Black-Clawson Co.*, 313 F.2d at 182.

B. Respondents' Suit For Declaratory Relief Under Section 301(a) Furthers The Statute's Goals Of Uniformity And Comprehensiveness In The Federal Substantive Law Governing Labor Agreements

1. The availability of suits for declaratory relief under Section 301(a) is necessary to ensure consistent application of the federal substantive law of collective bargaining agreements under the statute. In *Lincoln Mills*, 353 U.S. at 450-451, the Court held that Section 301(a) is not merely a jurisdictional statute that defines a class of suits subject to adjudication in federal courts. Rather, the Court stated that Section 301(a) "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements." *Id.* at 451. That body of law is to be based upon "the policy of our national labor laws," including the terms of federal statutes, the policy and background of that legislation, and other sources that commend themselves to "judicial inventiveness." *Id.* at 456-457.

In its subsequent decisions, the Court has construed Section 301(a) so as to assure that this body of law is consistently applicable to disputes arising under collective agreements. For example, in *Lucas Flour Co.*, *supra*, the Court held that Section 301(a) requires state courts to apply federal law to cases which, under that statute, could have been brought

in federal court. 369 U.S. at 103-104.[13] The Court explained:

> The dimensions of [Section] 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits of a kind covered by [Section] 301 to be decided according to the precepts of federal labor policy.

Id. at 103.[14]

In keeping with this concern for "[c]omprehensiveness," this Court has extended the rule of preemption under Section 301(a) "beyond suits alleging contract violations." *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 210 (1985). In that case, an employee complained that his employer had acted in bad faith in processing a claim for disability benefits under a plan established by a collective bargaining agreement. Although under state law the employee's claim sounded in tort, not contract, the Court held that federal law was controlling. Invoking "policies that animate [Section] 301" (*ibid.*), the Court explained that "questions relating to what the parties to a labor

---

[13] The Court in *Charles Dowd Box Co.*, *supra*, held that state courts may entertain suits over which federal courts would have jurisdiction under Section 301(a). 368 U.S. at 506.

[14] Indeed, because suits determining the meaning and application of collective bargaining agreements now arise solely under federal law, such cases are not subject to the traditional rule that federal preemption defenses must be determined initially in state court; rather, under the "complete preemption" doctrine, actions to enforce collective bargaining agreements always may be removed to federal court under 28 U.S.C. 1441(b). See *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 393-394 (1987); see also *Franchise Tax Bd.*, 463 U.S. at 24.

agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law." *Id.* at 211; see also *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 394 (1987) ("Section 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims 'substantially dependent on analysis of a collective-bargaining agreement.'" (quoting *International Bhd. of Elec. Workers* v. *Hechler*, 481 U.S. 851, 859 n.3 (1987)).

As discussed pp. 13-14, *supra*, fraud in the inducement is a traditional contractual defense that can be interposed in a Section 301(a) action for breach of a collective bargaining agreement. The validity of such a defense is to be determined as a matter of federal substantive law. Cf. *Nash* v. *Trustees of Boston Univ.*, 946 F.2d 960, 965-966 (1st. Cir. 1991) (incorporating fraud in the inducement into federal substantive law under ERISA). Because a principal purpose of Section 301(a) is to provide a uniform and comprehensive body of federal law that is consistently applicable to "disputes arising out of labor contracts," *Allis-Chalmers*, 471 U.S. at 209, that Section should apply to suits seeking to invalidate contracts as much as to suits seeking to validate them. Any other result would mean that the forum for precisely the same dispute would depend on which of the parties to a labor agreement is at the top of the caption in a case in which fraud is the decisive issue.

The need for a comprehensive and uniform body of federal law governing labor contracts is particularly compelling when the conduct affecting the validity of such contracts is *not* subject to the Board's jurisdiction. For instance, labor agreements negotiated on behalf of retired employees are not enforceable through the Board's processes, but they are

enforceable under Section 301(a). *Allied Chem. & Alkali Workers, Local Union No.1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20, 186-187 (1971). If parties to such labor agreements are denied declaratory relief under Section 301(a) for claims of fraud in the inducement, as they would be under petitioner's reading of the statute, the only available remedy would be a suit under state law.[15] The result would be that the validity of a labor agreement based on fraud in the inducement would be decided under *federal* law if the issue were raised as an affirmative defense in an enforcement action brought by the wrongdoer, but under *state* law if the contract's validity were challenged directly by the victim of fraud. A jurisdictional rule that produces anomalies of that sort would plainly undermine Section 301(a)'s objective of creating a uniform federal law for labor contracts, *Allis-Chalmers*, 471 U.S. at 211; *Lucas Flour Co.*, 369 U.S. at 103, and would recreate the kind of "checkerboard jurisdiction" that Section 301(a) was enacted to end, *Retail Clerks Int'l Ass'n* v. *Lion Dry Goods, Inc.*, 369 U.S. 17, 27 (1962).

2. In arguing that respondents' suit falls outside the scope of Section 301(a), petitioner asserts (Pet. Br. 26-29) that the statute encompasses only suits in which a court will interpret a particular provision of the parties' agreement. Petitioner similarly contends that respondents' suit, because it concerns a flaw in the formation of a collective bargaining agreement, "is not based upon contract" (Pet. Br. 34), but is essentially a tort claim for fraud (*id.* at 34-38). Those contentions lack merit.

[15] Because the claims in such suits are not "arguably" unfair labor practices under *Garmon*, 359 U.S. at 245, the suits likely would not be preempted by the NLRA. See *International Longshoremens Ass'n* v. *Davis*, 476 U.S. 380, 395 (1986) ("If the word 'arguably' is to mean anything, it must mean that the party claiming pre-emption is required to demonstrate that his case is one that the [NLRB] could legally decide in his favor.").

In authorizing "[s]uits for violation of contracts," Section 301(a), by its own terms, confers jurisdiction on federal district courts to determine the enforceability of labor contracts. A court cannot enforce a contract in the face of a breach by one of the parties if the contract or one of its terms is unenforceable *ab initio*. Thus, in order to exercise its jurisdiction over suits concerning contract violations, a court also must be able to determine the validity of the contract, whether the court expresses that determination implicitly or explicitly. As the Second Circuit has explained:

> It is axiomatic * * * that to determine whether a breach of agreement has occurred, a court must necessarily determine whether a valid agreement exists in the first place. Ancillary to determining the merits of an action for breach of a collective bargaining agreement, therefore, is the power to declare a purported agreement either invalid or binding. Not surprisingly, therefore, the Third, Fifth, Seventh, Ninth, Tenth and Eleventh Circuits all allow a district court to determine the validity of a collective bargaining agreement as part of the power to determine whether there has been a breach.

Kozera v. *Westchester-Fairfield Chapter of Nat'l Elec. Contractors Ass'n*, 909 F.2d 48, 52 (1990), cert. denied, 498 U.S. 1084 (1991).

The principle that jurisdiction to enforce necessarily includes jurisdiction *not* to enforce applies when a party asserts that a contract is voidable for fraud in the inducement. As the court of appeals concluded, "[petitioner's] allegedly fraudulent conduct goes to

the heart of the enforceability of the collective bargaining agreement between the parties," and thus respondents' suit arises "out of the collective bargaining agreement itself." Pet. App. 12a; see also *Nash*, 946 F.2d at 966 (fraud in the inducement relates to "the most elemental prerequisite to the formation of an enforceable contract—the meeting of the minds"); *Operating Engineers Pension Trust* v. *Wilson*, 915 F.2d, 535, 541 (9th Cir. 1990) (Canby, J., dissenting) ("To hold that a collective bargaining agreement means nothing—that it is invalid—is the most radical form of construction."), cert. denied, 505 U.S. 1212 (1992).[16] Thus, the fact that respondents' suit concerns conduct occurring before the contract

[16] In *Wilson*, the Ninth Circuit held that a "state tort claim for fraud in the inducement is not preempted by Section 301 because it does not require reference to the collective bargaining agreement." 915 F.2d at 539. As we explained in our amicus brief filed at the petition stage in that case (91-4 U.S. Br. at 12-14) the court of appeals in *Wilson* erred in relying on *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 413 (1988), in which this Court held that "an application of state law is preempted by [Section] 301 * * * only if such application requires the interpretation of a collective-bargaining agreement." Additionally, since *Lingle*, this Court has indicated that "it is the legal character of a claim, as 'independent' of rights under the collective-bargaining agreement, * * * that decides whether a state cause of action may go forward." *Livadas* v. *Bradshaw*, 512 U.S. 107, 123-124 (1994) (quoting *Allis-Chalmers*, 471 U.S. at 213)). As described in the text, far from being "independent" of the collective bargaining agreement, respondents' suit concerns the enforceability of the collective bargaining agreement and is inexorably tied to the parties' legal rights and obligations under it. Accordingly, a uniform body of federal law should govern the dispute, regardless of which party seeks to declare the contract voidable.

was executed does not render the suit beyond the statute's scope.[17]

Moreover, Congress enacted Section 301(a) so that courts would "enforce * * * agreements on behalf of or against labor organizations," *Lincoln Mills*, 353 U.S. at 455, and a consistent body of law would govern any "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement," *Allis-Chalmers*, 471 U.S. at 211. The need to ensure uniformity in federal law applicable to "disputes arising out of labor contracts," *id.* at 209, applies with equal force whether the issue is the meaning of particular contract terms, or is whether the contract was validly formed in the first place.

Amalgamated Ass'n of Street Employees v. *Lockridge*, 403 U.S. 274, 300-301 (1971), on which petitioner relies (Pet. Br. 37-38), is not to the contrary. In that case, the Court held that a former union member's suit against the union for an alleged breach of an implied-in-law term in the union's contract with the member was subject to the Board's exclusive jurisdiction under *Garmon*. 403 U.S. at 291-294. In rejecting the employee's contention that the suit could be maintained under Section 301(a), the Court reasoned that the employee had dropped the employer from the complaint, and the employee had not shown a breach of the union's duty of fair representation that otherwise might render *Garmon* preemption inapplicable. *Id.* at 299-300. Thus, the Court's statement in *Lockridge*

[17] Indeed, *Charles Dowd Box Co.* involved a suit brought under Section 301(a) that centered on pre-contract conduct. In that case, the union had filed suit to enforce a labor agreement in response to the employer's contention that the union had acted without authority in negotiating the agreement. 368 U.S. at 503-504.

that Section 301(a) applies "only to those disputes that are governed by the terms of the collective-bargaining agreement itself," *id.* at 301, did not purport to address a suit between an employer and a union regarding whether a collective bargaining agreement—because it may be voidable for fraud in the inducement—provides any terms at all. Indeed, the Court expressly recognized that "courts should be free to interpret *and enforce* collective-bargaining agreements." *Id.* at 300 (emphasis added).

Moreover, as the facts of this case demonstrate, a claim of fraud in the inducement often is intertwined with questions about the terms of a collective bargaining agreement. For example, petitioner asserts (Pet. Br. 4, 31) that the parties' collective bargaining agreement incorporated a February 2, 1994, Memorandum of Agreement that permitted petitioner to subcontract bargaining unit work after notice and discussion with respondents (J.A. 13-15). That provision of the collective bargaining agreement, and the parties' experience under it, may bear on respondents' allegation that they relied on petitioner's misprepresentations in assenting to the terms of the collective bargaining agreement. See J.A. 18-19.[18] Thus, in

[18] Moreover, the agreement contains a mandatory grievance procedure, which defines grievances "as any alleged violation of the terms of this Agreement or differences of opinion as to its interpretation or application" and limits the jurisdiction of the arbitrator "to the interpretation or application of the terms of this Agreement" J.A. 7, 9. Whether respondents' claim of fraud in the inducement is subject to those provisions is an issue for the district court to resolve on remand. See note 3, *supra*; cf. *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U.S. 643, 649 (1986) ("the question of arbitrability—whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance—is undeniably an issue for judicial determination" under Section 301(a)).

resolving whether to declare a collective bargaining agreement voidable based on fraud in the inducement, a court will often be required to interpret the agreement's terms and to consider how those terms would apply to the parties' dispute.

C. Respondents' Suit under Section 301(a) Does Not Unduly Conflict With The Board's Jurisdiction

Petitioner argues (Pet. Br. 26-34) that a claim for fraud in the inducement should be within the exclusive jurisdiction of the Board under the NLRA and that an action raising that claim under Section 301(a) would present an unwarranted intrusion upon the Board's authority. We disagree.

1. Petitioner initially errs in relying (Pet. Br. 26-30) on the mere existence of the Board's jurisdiction to regulate and remedy misconduct during the collective bargaining process. As discussed *supra*, pp. 8-9, a court may have jurisdiction under Section 301(a) even though the conduct at issue is an unfair labor practice under the NLRA. To be sure, some conflict is inevitable in that statutory scheme. See *Charles Dowd*, 368 U.S. at 514 ("It is implicit in the choice Congress made that 'diversities and conflicts' may occur * * * as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke.").[19] Judicial

[19] A variety of means have been developed to address the conflicts inherent whenever a court exercises concurrent jurisdiction under Section 301(a). For example, courts are not required to defer to the Board's interpretation of a collective bargaining agreement. *Litton Fin. Printing Div.* v. *NLRB*, 501 U.S. 190, 202 (1991). Similarly, "[t]he Board has, on prior occasions, declined to exercise its jurisdiction to deal with unfair labor practices in circumstances where, in its judgment,

resolution of the present controversy, however, would not constitute "an unprecedented intrusion upon both the substantive and the remedial authority of the Board." Pet. Br. 33. A suit *challenging* the enforceability of a labor contract based on fraud in the inducement poses no potential for conflict that would not otherwise be present if the opposing party had brought a coercive enforcement action *asserting* the contract's enforceability.

We do not mean to suggest that any defense to a contract action should provide the basis for an action under Section 301(a). For instance, we do not believe that Section 301(a) should be interpreted to authorize a suit asserting a statutory claim that Congress has committed to the Board's primary jurisdiction, with contractual issues only tangentially involved. See, *e.g.*, Pet. App. 12a (distinguishing between claims "aris[ing] * * * out of the NLRA" and "the collective bargaining agreement itself"); *Nielsen* v. *International Ass'n of Machinists & Aerospace Workers, Local Lodge 2569*, 94 F.3d 1107, 1117 (7th Cir. 1996)

---

federal labor policy would best be served by leaving the parties to other processes of the law." *Smith* v. *Evening News Ass'n*, 371 U.S. at 198 n.6. Courts conversely have stayed judicial proceedings to prevent possible conflicts with the Board and have given collateral estoppel effect to factual findings made by the Board. See *Martin* v. *Garman Constr. Co.*, 945 F.2d 1000, 1002-1006 (7th Cir. 1991), cert. denied, 502 U.S. 1122 (1992). Moreover, damages awarded under Section 301(a) are reduced by any duplicative monetary relief ordered by the Board. See, *e.g.*, *Phelan* v. *Local 305, United Ass'n of Journeymen*, 973 F.2d 1050, 1063-1064 (2d Cir. 1992) (duty of fair representation case). Finally, a court has "substantial discretion" whether to award declaratory relief, *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995), and a court may decline to award such relief if it would unduly conflict with a pending administrative proceeding. See E. Borchard *Declaratory Judgments*, 248-249.

(suit by employees to challenge labor agreement as violating Section 8(a)(3) of the NLRA, 29 U.S.C. 158(a)(3)), cert. denied, 117 S. Ct. 1426 (1997); *Hernandez* v. *National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972) (suit by employees alleging agreement was invalid because union no longer had majority support); cf. *Communications Workers* v. *Beck*, 487 U.S. 735, 743 (1988) (employees may not "circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation").[20]

Fraud in the inducement, however, is not uniquely a matter within the Board's administrative expertise. It is a traditional contract doctrine with which courts have a long familiarity, a familiarity that had developed even before the NLRB was created and the failure to bargain in good faith became an unfair labor practice. See *Restatement of Contracts* § 470 *et seq.* (1932). The Board, accordingly, has concluded in this and other cases (see note 1, *supra*) that a suit under Section 301(a) to declare a contract voidable based on fraud in the inducement does not unduly intrude upon its authority under the NLRA.

2. Nor is there reason why the Board should have exclusive jurisdiction in this particular case simply because respondents have filed unfair labor practice charges before the Board. In enacting Section 301(a), Congress intended to afford the parties to collective

---

[20] The precise line between disputes exclusively for the Board and those that may be brought both to the Board and to the courts need not be determined in this case. We think it clear, in any event, that the line is not the one for which petitioner contends—which would limit courts to cases in which a party alleges a prior violation of contract—and that a declaratory judgment action alleging fraud in the inducement is one which is suitable for the courts.

bargaining agreements a judicial forum for the resolution of labor disputes, "even though an alternative remedy before the Board is available." *Carey* v. *Westinghouse Elec. Corp.*, 375 U.S. 261, 268 (1964); see also *Allis-Chalmers*, 471 U.S. at 209; *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 561-562 (1976). Indeed, the history of Section 301(a) confirms that Congress anticipated that two tribunals could award relief based on the same conduct. In 1947, when the NLRA was amended and new federal judicial remedies, including Section 301(a), were added, Congress removed the term "exclusive" from the description of the Board's jurisdiction over unfair labor practices under Section 10(a) of the NLRA, 29 U.S.C. 160(a), but retained language which provides that the Board's power over unfair labor practices "shall not be affected by any other means of adjustment or prevention." Compare National Labor Relations Act, ch. 372 § 10(a), 49 Stat. 453 with ch. 120, § 10(a), 61 Stat. 146. That change "makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 52 (1947).

Moreover, contrary to petitioner's suggestion (Pet. Br. 32-33), respondents' suit is not coextensive with the unfair labor practice charge filed before the Board. As the court of appeals explained (Pet. App. 13a n.3), "[w]hile the claims of bad faith bargaining and of fraudulent inducement may overlap both factually and legally, they are not identical." Thus, regardless of whether petitioner is correct in asserting (Pet. Br. 34 n.22) that it was not subject to any duty under the NLRA to bargain in good faith or to supply information regarding its subcontracting plans, respondents may be able to establish under

traditional contract principles that their agreement with petitioner is voidable because of petitioner's allegedly fraudulent conduct during the formation of the contract.

Petitioner further errs in contending (Pet. Br. 33) that, "[s]hould the union prevail [in court], a conflict in the remedies is virtually certain." Under the tentative settlement agreement between petitioner and the Board's Regional Director (Pet. Br. 6 n.4), petitioner must, *inter alia*, remit back pay to enumerated employees and bargain in good faith about subcontracting. That administrative settlement is entirely consistent with respondents' suit under Section 301(a) for a declaratory judgment that the agreement is voidable at respondents' option.[21] Thus, declaratory relief in this case would not conflict with the administrative proceeding before the Board.

---

[21] The United States has confined its discussion in this brief to the question presented in the petition for certiorari, which this Court granted. Respondent's complaint, however, also includes damages claims (J.A. 19), which neither court below has addressed. Cf. *Local Freight Drivers, Local 208* v. *Rozay's Transfer*, 850 F.2d 1321, 1335 (9th Cir. 1988), cert. denied, 490 U.S. 1030 (1989).

The certiorari petition also noted (Pet. 4, n.4) that the terms of the collective bargaining agreement had expired by the time certiorari was sought. Under the NLRA, some terms of an expired contract can continue to impose obligations on the parties that govern their post-expiration conduct. See, *e.g.*, *Litton Fin. Printing Div.*, 501 U.S. at 198, 206-207. Because any question of possible mootness of this case would depend upon factual developments subsequent to the closing of the record below, that is a matter appropriately addressed by the parties rather than by the United States as amicus curiae.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

LAWRENCE G. WALLACE
Deputy Solicitor General

LISA SCHIAVO BLATT
Assistant to the Solicitor General

FREDERICK L. FEINSTEIN
General Counsel

LINDA SHER
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

JOHN H. FERGUSON
Assistant General Counsel
National Labor Relations Board

JANUARY 1998